



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : **10/054,328**
Filing Date : **20 JAN 2002**
First Named Inventor : **Alfred A. MARGARYAN**
Assignee : **AFO RESEARCH, INC.**
Art Unit : **1755**
Examiner : **Elizabeth A. BOLDEN**

**APPLICATION FOR PATENT TERM ADJUSTMENT
AND PETITION FOR SUSPENSION OR WAIVER OF RULES**

Applicant respectfully requests, pursuant to 35 U.S.C. §154(b)(1)(A) and (B), 37 CFR §1.702(a) and (b), and 37 CFR §1.705(b) and (c), an upward adjustment of **1,509 days**, or alternatively **1,391 days**, to its patent term. The facts and law supporting Applicant's requests and calculations are set out below.

**A. Facts and Law Supporting an 821 Day "A Delay" Adjustment Under
35 U.S.C. §154(b)(1)(A) and 37 CFR §1.704(c)(3)**

The PTO correctly found that it was responsible for 1,509 days of delay under 35 U.S.C. §154(b)(1)(A) ("A delays"), but completely negated that finding by assessing Applicant with 2,090 days of asserted applicant delay, calculated from the mailing date of the Notice of Abandonment on July 1, 2004 (Paper No. 21) until the PTO finally granted Applicant's sixth petition to revive on March 22, 2010 (Paper No. 45). Applicant challenges this PTO calculation of alleged applicant-caused delays.

Applicant submits that it is entitled to a minimum "A delay" patent term adjustment of **821 days** based solely on a correct application of 37 CFR §1.704(c)(3),

which provides that any reduction of adjustment for “abandonment of the application” “end[s] on the earlier of: (i) the date of mailing of the decision reviving the application... or (ii) the date that is four months after the date [of] the grantable petition to revive.” (Emphasis added.)

Beginning with its June 6, 2006 Petition to Revive and supporting papers, Applicant submitted five separate “grantable” petitions to revive prior to the one that was finally granted by the PTO on March 22, 2010. Nevertheless, the PTO now erroneously uses that later “granted” date to calculate its 2,090 days of Applicant delays, rather than the “earlier of the” “June 2006 “grantable” date, as required by 37 CFR §1.704(c)(3). Correcting this error reduces the PTO’s 2090 day applicant-caused delay by 1,412 days, resulting in a corrected Applicant delay of 688 days under 1.704(c)(3)(i). Subtracting those 688 days from the PTO’s conceded 1,509 days of A Delays results in a corrected patent term adjustment of **821 days**.

The PTO’s March 22, 2010 Order reviving the instant application was based on Applicant’s February 26, 2010 “Petition to the Director Under 37 CFR 1.181(a)(3) (Paper No. 44), which the Director “treated as a request to reconsider the petitions under 37 CFR 1.137(a) and (b), ... to revive the above-identified application.” That February 26 Petition was a tightly condensed summary (at the request of the PTO’s litigation attorney) of the facts and law set out in Applicant’s December 18, 2009 Complaint against the Commissioner in *AFO Research Inc. v. The Honorable David Kappos, et al.*, Case No. 1:09cv1388 (ED. Va. 2009 (Paper No. 43)),¹ and Applicant’s June 30, 2009 Request for Reconsideration (Paper No. 40) of its February 17, 2009 Renewed Petition to Revive

¹ Applicant’s civil action was voluntarily dismissed based upon the assurances of the PTO’s litigation counsel that if Applicant filed a renewed petition to revive, the PTO would reinstitute the case, which it did by its Order of March 22, 2010.

(Paper No. 35). The above-referenced documents are attached hereto as Exhibits A through E, respectively.

The same facts set out in Applicant's successful February 2010 Petition were also set out in much greater detail and with extensive supporting proof in Applicant's five preceding petitions to revive dated June 6, 2006; July 23, 2007; October 22, 2008; February 17, 2009; and June 30, 2009 (Paper Nos. 24, 26, 32, 35 and 40, respectively). Paper Nos. 24, 26, and 32 are attached as Exhibits F through H.

All five of Applicant's pre-civil action petitions were erroneously dismissed or denied by the PTO even though they presented the same essential facts (and more) that were presented in Applicant's February 26, 2010 post-civil action petition, which was granted. The only thing that had changed was the intervening filing of Applicant's civil action seeking judicial assistance.

Factually, there are no meaningful differences between Applicant's five petitions to revive. As the dismissals and denials piled up, however, Applicant's arguments necessarily became more numerous and more explicit in addressing the PTO's legally erroneous reasoning(s) in denying Applicant's prior petitions.

Those errors included: (a) the PTO's repeated (from June 6, 2006 forward) misreading of *Winkler v Ladd*, 221 F. 550, 552, 138 USPQ 666, 667 (D.D.C. 1963), which is entirely distinguishable; and *Futures Technology Ltd. v. Quigg*, 684 F. Supp. 430, 431, 7 USPQ2d 1588, 1589 (E.D. Va. 1988), which fully supports Applicant's position, not the Commissioner's; (b) the PTO's failure to recognize that Dr. Lindsey was not a "third party" as to the Applicant (NANO Teknologies, LLC ("NANO") at that time), but was a "fiduciary" as to the Applicant; (c) the PTO's improper focus on Dr.

Lonnie Lindsey's personal state of mind and its requirement that Applicant submit "direct" "first hand" knowledge of Dr. Lindsey's personal state of mind – after he was deceased; (d) the complete absence of proof that the Applicant, Nano, intended to abandon its application; and (e) the PTO's erroneous imposition of the "unavoidable" burden of proof under 37 CFR §1.137(a) rather than the "unintentional" standard of §1.137(b).

There was no failing on Applicant's part that occasioned the PTO's dismissals and denials of Applicant's first five petitions to revive, all of which were clearly "grantable." Accordingly, it would be grossly unfair, as well as unlawful, to dock Applicant for any delays during this period.

The PTO's April 1, 2009 decision denying Applicant's fourth petition to revive documents both its awareness of the key facts and its persistent, but legally erroneous, application of the law to those facts:

The record shows that there were three parties involved in the prosecution of the instant application at the time of abandonment. Dennis Beach [sic] (Beach) was the patent attorney, Jack Illare (Illare) was the Executive of the assignee, Nano Teknologies, LLC (Nano), and Dr. Lindsey, (Lindsey), an employee of Nano, who was apparently a go-between or liaison between Beech and Illare. Beech was getting instructions from Lindsey though Illare's employment contract specifically stated he was the responsible party for handling all patent matters. Petitioner states time and again that the application went abandoned due to Lindsey's misconduct. Petitioner states that Lindsey assured Illare that the patents were in order when in fact he was not responding to Beech's request for instructions on how to respond to the final Office action. Beech made numerous requests to Lindsey on how to respond to the final Office action. With no instructions forthcoming from Lindsey, Beech elected to take no further action in regard to the final Office action and thus the application became abandoned.

Where the applicant permits a third party to control the prosecution of an application, the third party's decision whether or not to file a reply to avoid abandonment is binding on the applicant. *See Winkler*, 221 F. at 552, 138 USPQ at 667. Where an applicant enters an agreement with a

third party for the third party to take control of the prosecution of an application, the applicant will be considered to have given the third party the right and authority to prosecute the application to avoid abandonment (or not prosecute), unless, by the express terms of the contract between applicant and the third party, the third party is conducting the prosecution of application for the applicant solely in a fiduciary capacity. See *Futures Technology Ltd. v. Quigg*, 684 F. Supp. 430, 431, 7 USPQ2d 1588, 1589 (E.D. Va. 1988). Otherwise, the applicant will be considered to have given the third party unbridled discretion to prosecute (or not prosecute) the application to avoid abandonment, and will be bound by the actions or inactions of such third party.

Petitioner argues that Lindsey was not a third party and that Illare's employment contract made it clear he was responsible for all patent matters. The record indicates that, irrespective of any employment agreement, Lindsey was left to make all patent decisions. Beech was totally dependent on Lindsey for instructions on how to proceed in prosecution of the instant application. Illare admits he depended on Lindsey in patent matters because he considered Lindsey very knowledgeable about patents and patent proceedings. The record establishes that Beech knew nothing of Illare's responsibilities in regard to patent matters and Illare did not even know who the patent attorney was for the instant application. Beech and Illare were totally insulated from each other. Illare admits in the renewed petition that he did not know any of the specifics in regard to the instant application to take appropriate action. The record fairly well establishes that Lindsey was in total control of the prosecution of the application, being the only one who was in a position to communicate instructions to Beech, the attorney of record. The record indicates Illare was not in a position to make any patent prosecution decisions in regard to the instant application. Illare depended on Lindsey's expertise, did not know exactly what patent application was subject to his control and apparently was content to not even know who the patent attorney was. The record indicates Illare effectively relinquished control of the prosecution of the instant application to Lindsey and thus made him the third party. As such, petitioner is bound by the actions (or inactions) of Lindsey.

* * *

Under the circumstances, petitioner has not carried his burden of proof to show that the delay was unavoidable as required by statute and by regulations of the Patent and Trademark Office. Petitioner is reminded that a Petition to Revive an application under 37 C.F.R. 1.137(a) cannot be granted where a Petitioner has failed to meet his burden of establishing unavoidable delay within the meaning of 37 C.F.R. 1.137(a) and 35 U.S.C. 133. [emphasis added]

As noted in paragraph 44² of Applicant's federal court Complaint:

The Petitions Director's determination that Lindsey was a "third party," rather than a fiduciary, with respect to Nano was clearly erroneous, arbitrary and capricious, both legally and factually. Accordingly, the Petitions Director's reliance on *Winkler*, rather than *Futures Technology* was also clearly erroneous, arbitrary and capricious. The Petitions Director's failure to even address the cited and applicable standard of 1.137(b) was also unlawful, arbitrary and capricious. This is particularly egregious since it was the PTO itself who urged Ganjian to rely on Section 1.137(a) rather than (b). Fortunately, Ganjian never completely abandoned reliance on 1.137(b), although the PTO treated all of the Petitions subsequent to Examiner Friedman's advice as having abandoned any reliance on 1.137(b).

As noted, the factual bases for these legal arguments, which eventually caused the PTO to capitulate on March 22, 2010 (see Paper Nos. 44 and 45), were repeatedly presented to the PTO commencing on June 6, 2006, the difference in result being solely attributable to Applicant's intervening resort to the federal judiciary. On these facts, it is not seriously debatable that Applicant's first petition to revive, on June 6, 2006, was "grantable" under 1.704(c)(3)(i) and was only perceived to be otherwise because of the PTO's erroneous view of the law.

Accordingly, any reduction of the PTO's calculated A delays that is predicated on Applicant's abandonment under 1.704(c)(3) has to end "four months after" Applicant's "grantable" Petition of June 6, 2006, i.e., on October 6, 2006, rather than on March 22, 2010, when the PTO finally granted Applicant's sixth petition. The number of elapsed days from the mailing date of the abandonment, July 1, 2004, to that October 6, 2006 date is 688 days, rather than the 2,090 days asserted in the PTO's Patent Term Adjustment. When this correct figure is subtracted from the PTO's uncontested calculation of its A delays, i.e., 1509 days, Applicant is entitled to a net extension of **821 days**.

² Other legal errors are set out in other portions of the Complaint, as well as in Applicant's prior and subsequent petitions to the PTO.

B. Facts and Law Supporting a 1,509 Day “A Delay” Adjustment

The appropriate A delay patent term adjustment increases to **1,509** days if the period from the mailing of the Notice of Abandonment on July 1, 2004 to the filing of Applicant’s first petition to revive on June 6, 2006 is not considered a “time during which the Applicant failed to engage in reasonable efforts to conclude prosecution” under 35 U.S.C. §154(b)(1)(c) and its regulatory counterpart, 37 CFR §1.704(a).

As the documented facts very clearly show, Applicant’s predecessor, NANO, despite the exercise of “due care,” was “unable to reply” to the PTO’s July 1, 2004 Notice of Abandonment until June 6, 2006 due to the unauthorized and unratified conduct of a single renegade employee, Dr. Lonnie Lindsey, whom the PTO wrongly characterized as a “third party,” with unbridled authority; rather than a fiduciary, with limited authority, as to Nano, its Board and owners. As previously pointed out, this distinction is critical under the applicable case law with respect to corporate liability for an unfaithful employees’ acts or omissions with respect to the abandonment of a patent. *Cf., Winkler v. Ladd*, 221 F. at 552, and *Futures Technology Ltd. v. Quigg*, 684 F. Supp. at 431.

As spelled out in detail in the attached exhibits, Dr. Lindsey intentionally misled the Applicant;³ did not have authority to unilaterally bind the Applicant;⁴ embezzled corporate funds;⁵ fired the inventor;⁶ fled the country;⁷ hid, destroyed or absconded with

³ See Supplemental Statement filed June 6, 2006; May 23, 2004 email from Lindsey to Illare attached to Renewed Petition of 7/23/07 stating “I will continue on with getting the patents issued then marketing them as I discussed last March with you”; and “Additional Sheets Containing Statement Establishing Unavoidable Delay Under 37 CFR §1.137(a)”, filed 10/27/08 (“Additional Sheets”) (Exh. H).

⁴ See Employment Agreement of August 15, 2002 attached to July 23, 2007 Reviewed Petition under 37 CFR §1.137(b).

⁵ See Supplemental Statement filed June 6, 2006, page 2, lines 43-48, page 3, lines 1-4; Cash Disbursement Reports attached to the “Additional Sheets.”

⁶ See Exhibit B to Supplemental Statement of June 6, 2006.

key files;⁸ and died in the Philippines,⁹ making it nearly impossible for Applicant's corporate officers or board to ascertain that there had been a Notice of Abandonment, let alone file a more timely petition to revive. Applicant's frustrated and sometimes futile efforts to ascertain the status of its intellectual and other property during this period are further set out in the papers attached as Exhibits B-H and in the Declarations of Jack J. Illare, Dennis W. Beech, and Alfred Margaryan referenced therein and in footnotes 3-9, *supra*.

Because of these facts, which were either ignored or unappreciated, but never factually contested by the PTO, it is respectfully submitted that "[Applicant [did not] fail[ed] to engage in reasonable efforts to conclude prosecution." See, §154(b)(1)(c)(i), and 1.704(a). Accordingly, any reduction in patent term adjustment for the period prior to the filing of Applicant's June 6, 2006 petition should be waived and the PTO's calculated "A delay," i.e., 1,509 days, should not be reduced by any amount.

By statute, the patent term adjustments under 35 U.S.C. §154(b)(1)(A) ("A delays") are only reduced by delay within the preview of §154(b)(2)(c)(i) and are not affected by the adjustment reductions of §154(b)(2)(C)(ii), which only apply to "adjustments to patent term made under the authority of paragraph (1)(B)" i.e., "B delays." Since this calculation does not include any B delays, the provisions of subparagraph (C)(ii) of the statute have no application to this calculation. Accordingly, there is no statutorily imposed adverse presumption that Applicant is required to

⁷ See Supplemental Statement Establishing Unintentional Delay under 37 CFR §1.137(b), page 4, lines 15-19; see also "Additional Sheets", page 14.

⁸ *Id.*; see also 6/6/06 Petition to Revive; and Supplemental Statement, page 3, lines 5-8.

⁹ *Id.*

overcome under the controlling statute in order to revise the A delay adjustment as requested in this section.

While the Director clearly has authority to prescribe regulations “establishing the circumstances that constitute a failure of an applicant to engage in efforts to conclude processing or examination of an application” (see §154(b)(2)(c)(iii) and 37 CFR §1.704(c)(3), the Director also has the authority, “in an extraordinary situation, when justice requires” to waive or suspend “any requirement of the regulations in this part which is not a requirement of the statutes....” See 37 CFR § 1.183. This is just such an “extraordinary situation” in which it would be manifestly unjust and unfair to punish Applicant for the delays over which it had little or no control under the unusual, if not unique, circumstances of this case.

If that portion of §1.704 (c)(3) which requires (“shall be deemed”) a reduction in patent term adjustment that runs the entire period from the date of abandonment to the date of the first grantable petition to revive is waived, in whole or part, the patent term adjustment in this case could be extended from the minimum adjustment required by the rules, 821 days, up to 1,509 days, i.e., the entire period that the PTO calculated as its own A delays. As noted, this result is consistent with the statutory scheme, as set out in §154 (b)(i)C.

It is respectfully submitted that this is the correct and fair result in light of the highly unusual and probably unique facts and circumstances of this case, including not just the actions and omissions of the nefarious and now deceased Dr. Lindsey, but also the PTO’s own repeatedly erroneous rulings, which required Applicant to file, at great expense and aggravation, no less than six petitions to revive as well as a civil action

against the Commissioner to finally revive the application. It is highly unlikely that such a situation has ever previously occurred.

C. Applicant is Entitled to At Least 1,301 Days of “A + B Delays”

In addition to the adjustment prescribed by 35 U.S.C. §154(b)(1)(A) addressed *supra*, Applicant is entitled to adjustments under 35 U.S.C. §154(b)(1)(B) (“B Delays”), i.e., delays due to the PTO causing the patent to issue more than 3 years after the filing of the application. Here, the 3 year period expired on January 21, 2005 and the total time elapsed between that date and the Notice of Allowance on February 21, 2011 is 6 years, 10 months and 3 days, or 2,223 days.

From the above total “any time consumed by continued examination requested by the applicant” must be subtracted under 35 U.S.C. §154(b)(1)(B)(i). Here the time consumed by the Applicant’s Request for Continued Examination (“RCE”) should only be considered to run from the date the RCE was forwarded to the examiner, November 5, 2010, until the Allowability Notice on February 16, 2011, a period of 3 months and 11 days, or 101 days. The period of time during which the PTO erroneously failed to grant Applicant’s repeated petitions to revive cannot logically be considered “time consumed by continued examination” as there was no examination during this period. The PTO’s B delay, prior to any adjustments for Applicant’s delay, is thus 2,223 days minus 101 days or 2,121 days.

From this amount, there must be subtracted that portion of the A+B delays that overlap each other. Under *Wyeth v. Dudas*, 580 F. Supp.2d 138, *aff’d as Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010), this overlap can only occur during the period of B delays, i.e., after the 3 year anniversary of the filing date. Here, all of the A delays,

occur after that date. Accordingly 1,509 days of A delays must be subtracted from the 2,121 days of B delay, for a total of 612 non-overlapping B delays.

Adding the non-overlapping A and B delays results in a total A+B delay of 2,121 days. From this figure, Applicant-caused delays must also be subtracted. As shown in Part A of this Application that subtraction, as applied to the A delays and properly calculated, is 688 days (from the notice of abandonment to the first grantable petition). Subtracting out this amount results in a net A+B patent term adjustment of 1,433 days.

However, since this sum includes B delays, a further subtraction must be made under Section 154(b)(1)(C)(ii) because of the statutory “deemed” language of that section, which is also embodied in the regulations at §1.704(b). Here that “deemed” reduction runs from 3 months after the November 18, 2003 Final Rejection i.e., February 18, 2004, until the Notice of Abandonment on July 1, 2004 (any delays after the Notice of Abandonment are already accounted for). Subtracting this additional period of 4 months and 12 days, or 132 days, from the previously adjusted A+B total of 1,433 days results in **1,301 days** for the net A+B total.

However, if Applicant’s alleged delay from 3 months after the Final Rejection until the Abandonment Notice is considered a period in which the Applicant “in spite of all due care, ... was unable to respond” under §154(b)(3)(c), which Applicant asserts is the case here, three additional months may be reinstated. Applicant submits it has made such a showing and that it is entitled to such reinstatement, resulting in a total A+B adjustment of **1,391 days**.

D. Conclusion

In sum, Applicant submits that: (a) it is legally entitled to an **821 day** "A delay" adjustment solely under a proper application of §1.704(c)(3) given the demonstrably "grantable" nature of each of Applicant's six petitions to revive, the earliest of which was filed on June 6, 2006; and (b) that this "A delay" adjustment should be increased to **1,509 days** pursuant to Applicant's requested suspension or waiver of the rules; and (c) that, in any event, Applicant is entitled to a minimum A+B delay adjustment of **1,391 days**, without any suspension of the rules.

It is further submitted that all requirements of 37 CFR §1.705 have been met. The \$400 fee required by 37 CFR §1.17(f) are submitted herewith, and no further fees are believed due. Nevertheless, the Commissioner is hereby authorized to charge any deficiency in the fee(s) paid, asserted to be paid, or which should have been paid, to Deposit Account No. 14-1140.

The patent is not subject to a terminal disclaimer.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /Michael J. Keenan/
Michael J. Keenan, appointed by
Power of Attorney filed May 19,
2011

RAR:cf
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NIXON & VANDERHYE, P.C.
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

MAILED

MAR 22 2010

OFFICE OF PETITIONS

In re Application of
Alfred A. Margaryan
Application No. 10/054,328
Filed: January 21, 2002
Attorney Docket No. RAR-5423-2

ON PETITION

This is a decision on the PETITION TO THE DIRECTOR UNDER 37 CFR 1.181(a)(3) which is being treated as a request to reconsider the petitions under 37 CFR 1.137(a) and (b), filed February 26, 2010, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The petition under 37 CFR 1.137(a) is **DISMISSED** as being moot.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action mailed November 18, 2003, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 19, 2004. A Notice of Abandonment was mailed on July 1, 2004.

As to the petition under 37 CFR 1.137(b):

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of a Request for Continued Examination; (2) the petition fee; and (3) a showing to the satisfaction of the Director that the entire delay was unintentional.

As to the petition under 37 CFR 1.137(a):

This petition is dismissed as moot in view of the grant of the 37 CFR 1.137(b) petition.

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/054,328
Filing Date : 20 JAN 2002
First Named Inventor : Alfred A. MARGARYAN
Assignee : AFO RESEARCH, INC.
Art Unit : 1755
Examiner : Elizabeth A. BOLDEN

PETITION TO THE DIRECTOR UNDER 37 CFR 1.181

This petition to the Director, under 37 CFR 1.181 (a)(3) seeks to invoke the supervisory authority of the Director to reconsider the Decisions mailed April 1, 2009 and October 28, 2009 denying Petitioner's Renewed Petition to Revive the above application under 37 CFR 1.137 (a) and (b), filed on February 17, 2009, and Petitioner's Request For Reconsideration, filed June 30, 2009.

The above Decisions were each predicated on a misunderstanding of corporate law and the fiduciary obligations of corporate officers and directors, such as Dr. Lonnie Lindsey, to their employer, i.e., Petitioner's predecessor, Nano Technologies, LLC ("Nano"), and its shareholders, e.g., Mr. Jack Illare. These common law, statutory and contractual principles preclude treating Dr. Lindsey as a "third party," rather than as a corporate and contractual fiduciary. The following are the specific legal errors in the noted Decisions:

EXHIBIT B

(1) Failing to recognize that Dr. Lindsey, the President of Petitioner's predecessor, Nano, was not a "third party" as to Nano and that he was in fact a fiduciary with respect to Nano and its investors;

(2) Predicating the Decisions of January 6, April 1 and October 26, 2009 solely on 37 C.F.R. 1.137 (a) provided no ruling with respect to the more applicable 37 C.F.R. 1.137 (b), despite the facts that 37 C.F.R. 1.137(b) had repeatedly been asserted as a basis for relief, had not been withdrawn despite the PTO's misleading advice to do so, and was established by the evidence of record;

(3) The PTO's requirement, in its April 25, 2007 and June 6, 2008 Decisions, that Plaintiff submit a declaration or other proof evidencing "direct" or "first hand knowledge" of Lindsey's subjective state of mind in order to meet the "unintentional" standard of 1.137(b), which was contrary to law, arbitrary and capricious because such evidence was unnecessary, irrelevant and impossible to obtain since Lindsey was deceased and his personal state of mind was never the appropriate test of Nano's intentions; and

(4) The complete absence of any evidence in the record of any intent by Nano to abandon the application.

Petitioner incorporates by reference, as though fully set forth herein, all of the facts, evidence, arguments and legal citations set out in its Renewed Petition to Revive under 37 CFR 1.137 (a) and (b), filed February 17, 2009; Petitioner's Request For Reconsideration, filed June 30, 2009; and Petitioner's Complaint, filed in U.S. District Court for the Eastern District of Virginia on December 28, 2009 as Civil Action No. 1:09-cv-1388 (AJT/TRJ), which civil action was voluntarily dismissed, on February

25, 2010, in order to allow this matter to be remanded to the Director for further reconsideration.

It is respectfully submitted that the above-cited Decisions having been shown to be based on errors of law, a failure to properly apply the law to the facts, and a failure to employ the unintentional standard of 37 CFR 1.137 (b), and, the abandonment of the application having been shown to have been both unintentional and unavoidable, that the April 1, 2009 and October 10, 2009 Decisions denying both the Renewed Petition To Revive and Request For Reconsideration should be reversed and that the above Application Serial No.10/054,328, should be ordered and deemed to be revived and reinstated, pursuant to 37 CFR 1.137(a) and/or (b), based on Nano's unintentional and/or unavoidable abandonment.

It is further noted that all requirements of 37 CFR 1.137(a) and (b) have been met, and no further fees are believed due. Nevertheless, the Commissioner is hereby authorized to charge any deficiency in the fee(s) paid, asserted to be paid, or which should have been paid to Deposit Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /Michael J. Keenan/
Michael J. Keenan
Reg. No. 32,106

MJK:sab
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

UNITED STATES DISTRICT COURT

Eastern District of Virginia

AFO RESEARCH, INC., a California corporation

SUMMONS IN A CIVIL CASE

Plaintiff

v.

Case No. 1:09cv1388

The Honorable David Kappos, Under Secretary of
Commerce for Intellectual Property and Director of
the United States Patent and Trademark Office and
Robert L. Stoll, Commissioner for Patents

Defendants

TO: (Name and Address of Defendant)

Hon. David Kappos
Office of the General Counsel
United States Patent and Trademark Office
Madison Bldg. East, Room 10B20
600 Dulany Street, Alexandria, VA 22314

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Robert A. Rowan, Va. Bar No. 29645
Michael L. Keenan, Va. Bar No. 14260
Michael E. Crawford, Va. Bar No. 39566
NIXON & VANDERHYE P.C.
901 N. Glebe Rd.
Arlington, VA 22203
Tel: 703-816-4000
Fax: 703-816-4100

OFFICE OF THE
GENERAL COUNSEL
U.S. PATENT
AND
TRADEMARK OFFICE
2009 DEC 23 PM 3:01

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

Fernando Galindo, Clerk

CLERK

DATE

12/18/2009

Kathryn M. Stasko
(By) DEPUTY CLERK

EXHIBIT C

Best Available Copy

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	
NAME OF SERVER <i>(PRINT)</i>	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____ </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: _____ _____ _____ </div> <div> <input type="checkbox"/> Other (specify): _____ _____ _____ </div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 30%;"> Executed on _____ <div style="text-align: center; margin-top: 5px;">Date</div> </div> <div style="width: 60%;"> _____ <div style="text-align: center; margin-top: 5px;">Signature of Server</div> </div> </div> <div style="margin-top: 20px; text-align: center;"> _____ <div style="text-align: center; margin-top: 5px;">Address of Server</div> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

AFO RESEARCH, INC., a California
corporation,

Plaintiff,

v.

The Honorable David Kappos, Under
Secretary of Commerce for Intellectual
Property and Director of the United States
Patent and Trademark Office and Robert L.
Stoll, Commissioner for Patents

Defendants

2009 DEC 18 P 3:45

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Case No.: 1:09CV1388

Assigned to: AJT/TRJ

**Complaint for Injunctive, Declaratory and Other Equitable and Legal
Relief under the Administrative Procedure Act**

Plaintiff, AFO Research, Inc. ("AFO"), for its Complaint, alleges the following:

I. NATURE OF THE CASE

1. This is a civil action by the assignees of United States Patent Application SN/054,328 (the '328 patent application") seeking judicial review of final agency action and injunctive and declaratory relief based on the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, 28 U.S.C. §1361 and 28 U.S.C. §2201.
2. The final agency action at issue is set out in the April 1, 2009 and October 28, 2009 Decisions of the United States Patent and Trademark Office ("PTO") attached hereto as Exhibits A and B.

II. JURISDICTION AND VENUE

3. This is an action arising under the laws of the United States for judicial review under Section 704 of the APA of final agency action for which there is no other adequate remedy in court, and to compel the Director of the PTO to reinstate the '328 patent application under that statute and 28 U.S.C. § 1361, and for a Declaratory Judgment under 28 U.S.C. § 2201. This Court has jurisdiction over the subject matter of this action pursuant to 5 U.S.C. 701 et. seq., and 28 U.S.C. §§ 1331, 1338(a), 1361 and 1367.

4. Venue is proper under 28 U.S.C. §§ 1391 (b) since a substantial part of the events or omissions giving rise to the claims asserted occurred in, or a substantial part of the property that is the subject of the action is situated in this district, and the Defendant may be found in this district.

5. The Defendants actions will, if not reversed or enjoined, inflict substantial and irreparable damage to Plaintiff's business, revenues and profits arising from activities within this district.

III. THE PARTIES

6. Plaintiff AFO Research, Inc. ("AFO") is a corporation organized and existing under the laws of the State of California and having an address at 878 Greenleaf Circle, Vero Beach, Florida, 32960. AFO does business in this judicial district and Commonwealth.

7. Plaintiff AFO is the successor in interest to Nano Teknologies, LLC ("Nano"), a Florida limited liability company, with respect to the patent application at issue by virtue of an

Assignment for Application for United States Patent dated June 6, 2006, recorded at the PTO on the same date, at reel and frame 018221/0169.

8. At the time of the above assignment, Nano was the owner and assignee of the patent application at issue by virtue of an assignment dated June 23, 2003 from the inventor, Alfred A. Margaryan ("Margaryan"), recorded at the PTO on July 3, 2003, at reel and frame 014237/0428.

9. Defendant David Kappos is the Under Secretary of Commerce for Intellectual Property and Director ("Director") of the PTO, acting in his official capacity. The Director is the head of the agency, charged by statute with providing management and supervision for the PTO and for the issuance of patents.

10. Defendant Robert L. Stoll is the PTO Commissioner of Patents.

IV. FACTUAL BACKGROUND

11. Nano was formed for the purpose of developing and licensing innovations and inventions in nano material science.

12. Nano's Limited Liability Company Operating Agreement provides that its business and affairs (as opposed its day-to-day operations) shall be managed by a Board of Managers which shall have the same power and authority and responsibility as the board of directors of a corporation. Nano's initial Board of Managers consisted of two members, Dr. Lonnie Lindsey ("Lindsey"), as President, and Jack Illare ("Illare"), as Chairman of the Board.

13. Nano's Operating Agreement further provides that the Board of Managers must act upon all matters by a majority vote (unanimous in the case of two managers) and that no action

may be taken unless all members of the board are first given notice of and a reasonable opportunity to comment upon any proposed action.

14. Nano's operating agreement further provides that "all contracts and obligations of the business arising in the ordinary course shall require the Managing Directors' approval."

15. In addition to being the Chairman of the Board of Nano, Illare was also its principal investor, having invested \$1,000,000 in three deposits dated February 21, March 29 and May 31, 2001.

16. On June 21, 2001, U.S. patent application 09/852,238, ("the '238 application") was filed by Dennis Beech, Esq. ("Beech") on behalf of Margaryan, as inventor of the patent application's subject matter, and Nano, as Margaryan's assignee. Subsequently, the '238 application was abandoned in favor of the patent application at issue, i.e., Application No. 10/054,328 ("the '328 application"), which was filed on January 21, 2002 as a Continuation-in-Part of the '238 application.

17. Margaryan, the inventor of the subject matter of both the '238 and '328 patents, was an employee of Nano at the time both patents were filed by virtue of an Employment Agreement dated October 2, 2000 and an Addendum of May 11, 2001. Margaryan also signed an Employee Invention Agreement and an Addendum to that Agreement on the same dates. However, he was subsequently terminated from his employment with Nano by Nano's then-President, Dr. Lonnie Lindsey ("Lindsey") on April 28, 2002. Beech was never informed of Margaryan's termination.

18. Thereafter, Lindsey was Nano's sole contact with Beech, the attorney of record for the prosecution of the '328 patent.

19. As Nano's President, Lindsey was charged by Nano and had fiduciary obligations to Nano and to its investors to ensure, to the extent possible, the successful prosecution of the '328 patent, which was Nano's principal asset. However, under Nano's Operating Agreement, Lindsey did not have the unilateral authority to abandon the '328 patent application, a matter which required the unanimous vote of both Board members, Msrs. Lindsey and Illare, after notice and a reasonable opportunity to address such action.

20. On December 19, 2002, the PTO mailed a Non-Final Rejection of the '328 patent application to Beech, who forwarded it to Lindsey and Margaryan. Margaryan had, however, been terminated by Dr. Lindsey eight months earlier and was no longer involved in the prosecution of the '328 application. Lindsey had sole responsibility for responding to any materials forwarded from, or inquiries by Beech, subject to his obligations to provide notice to, and obtain the consent of, Illare with respect to matters affecting Nano's business and affairs, as opposed to its day-to-day operations.

21. On March 19, 2003, Nano, through Beech, and at the direction of Lindsey, filed a response to the December 19, 2002 Non-Final Rejection.

22. On May 30, 2003, the PTO mailed a second Non-Final Rejection of the '328 application to Beech who forwarded it on to Lindsey and Margaryan. However, as noted, Margaryan had already been terminated without Beech's knowledge, and sometime prior to June 22, 2003 was asked to execute a formal assignment of any remaining interest he may have had in the '328 application to Nano, which he did on June 22, 2003, thereby divesting himself of any interest whatsoever in the '328 application.

23. On August 15, 2003, Illare became Nano's Managing Director in addition to his prior duties as Chairman, as set out in the third revision to the Nano's Limited Liability Company Operating Agreement.

24. On August 28, 2003, Nano filed a response to the pending Non-Final Rejection of the '328 case through Beech and at the direction of Lindsey.

25. Thereafter, on November 18, 2003 the PTO mailed a Final Rejection of the '328 application to Beech who, on December 16, 2003, forwarded that Final Rejection only to Margaryan. As noted, Margaryan had been terminated eighteen months earlier and had relinquished all rights to the '328 patent six months earlier, but Lindsey had never informed Beech of Margaryan's termination.

26. On January 29, 2004, Beech forwarded a reminder regarding the Final Office Action to Margaryan, with a copy to Lindsey at his Fountain Valley California address, but not to Illare or to Nano at its new address in Jupiter, Florida, as a result of Lindsey's failure to advise Beech of the revision to Nano's Operating Agreement appointing Illare as Managing Director and changing the Company's official address to Jupiter, Fla. Consequently, Beech's January 29, 2004, like his December 16, 2003 letter, was never received by Illare or Nano.

27. A further reminder was sent to Margaryan and Lindsey at their California addresses by Beech on March 30, 2004.

28. This time Beech also attempted to send a copy of his letter to Nano at the Florida address indicated on the June 23, 2003 assignment prepared and obtained by Lindsey.

However, that assignment contained a misspelled version of Nano's name, a misspelled street name and, very importantly, included no suite number. Even more importantly, Beech's letter was addressed to a Randy Lukasik, a former employee of Nano's, who had been discharged

nearly eight months earlier. That letter, like the previous letters, was never forwarded to Nano's correct address or received by Illare. These errors were not the fault of either Beech or Illare.

29. On May 23, 2004, after the final due date of May 18, 2004 for responding to the Final Rejection of November 18, 2003, Lindsey sent Illare an email requesting permission to sell the company's patents, which permission was not granted by Illare. In that email, Lindsey also stated that "I will continue on with getting the patents issued then marketing them as I discussed last March with you." No mention was made of Beech's letters or of any pending or past due requirements in the prosecution of any patent.

30. On July 1, 2004, the PTO mailed to Beech a Notice of Abandonment of the '328 application for failure to respond to the Final Rejection of November 18, 2003. On July 8, 2004, Beech forwarded the Notice of Abandonment to the long-terminated Margaryan and to Lindsey's address in California. No copy was provided to Nano or Illare and none of these communications were brought to Illare's attention.

31. In August, 2004, Lindsey met with Illare and admitted that he had misapplied \$400,000 of Illare's funding of Nano to another investment in which Lindsey had a financial interest. Lindsey did not mention any of the communications from the PTO or Beech regarding the '328 application.

32. Because Lindsey had a financial stake, as part owner of Nano, in the '328 patent application, and because Lindsey had successfully prosecuted another of Nano's patent applications to issue, resulting in U.S. Patent No. 6, 495,481, it did not follow that Lindsey would act contrary to his own financial interest in neglecting to respond to Beech or the PTO with respect to the '328 patent, despite his unrelated diversion of Illare's funds. In any event,

Illare had no knowledge that any actions were required, let alone delinquent, with respect to the '328 application. Nor was Illare aware of Beech's representation of Nano or of Beech's contact information.

33. After a period of time, Illare located Margaryan, with whom he previously had no contact. After a further period of time, Illare was able to convince Margaryan that he, not Lindsey, was now in charge of Nano. Illare was eventually able to establish a relationship with Margaryan and enlist his help with respect to locating Nano's records and assets. The focus at that point was with respect to the funds diverted by Lindsey.

34. Later, in 2005, Illare learned that Lindsey had died in the Philippines. Upon learning of Lindsey's death, Illare attempted to broaden his search of Nano's records, which had previously focused primarily on the diverted funds, to include other assets of the company, but found that various records of Nano had been lost with the disappearance and death of Lindsey.

35. On December 20, 2005, Illare, having learned of Beech's representation of Nano at the PTO, contacted Beech, but was initially unable to convince Beech to turn over any of Nano's records because Beech had had no prior communications from Illare, no power of attorney from Illare, and was unaware of Illare's funding of or position with Nano. No records were produced to Illare by Beech at that time. It was not until Beech received a letter from and had a conversation with Illare's attorney, Eric Granitur, that Beech finally agreed to produce the relevant records to Illare. These actions were taken by Illare after many attempts over a several month span had failed to get Beech to produce Nano's records.

36. Illare thereafter retained Peter Ganjian, a registered patent agent, to review the records eventually provided by Beech, as well as the other records that Illare had been able to locate with respect to the '328 application.

37. After reviewing Nano's records, which were received by Illare and Ganjian on a piecemeal basis, Ganjian filed, on June 6, 2006, a Petition to Revive the abandoned '328 patent application on behalf of Plaintiff as Nano's assignee, asserting that the abandonment was "unintentional" under 37 C.F.R. §1.137(b).

38. This Petition was "dismissed" by the PTO on April 25, 2007 for the stated reason that Ganjian had no "first hand or direct knowledge of the facts and circumstances" of Lindsey's state of mind when he failed to respond to the Final Office Action with respect to the '328 patent application. Thereafter, on July 23, 2007, Plaintiff filed a Renewed Petition to Revive under 37 C.F.R. §1.137(B) with a declaration from Illare.

39. This Renewed Petition was again "dismissed" by the PTO on June 6, 2008 because "Illare had no knowledge of patent activities in regard to the incident application at the time of delay since Dr. Lindsey was allegedly hiding the fact that he was not responding" and that "Beech had no direct knowledge of why Dr. Lindsay apparently decided to let the application go abandoned." This rationale is clearly erroneous as a matter of law and undisputed fact because: (a) Nano, not Lindsey, was the owner of the application; (b) only Nano could abandon the application, its principle asset, and it could only do so by action of its Board of Managers, after notice to Illare, which never occurred; (c) the need for a response to the Final Rejection was never brought to the attention of the Board/Illare, and therefore no intentional abandonment by Nano was legally possible; and (d) the PTO's requirement that Nano submit a declaration, "with direct knowledge" of Lindsey's subjective state of mind was not only irrelevant, but impossible, since Lindsey was dead.

40. A further Renewed Petition was filed by Plaintiff on October 22, 2008, this time under the "unavoidable" standard of 37 C.F.R. §1.137(a). This change was done at the advice of

PTO Petitions Examiner Carl Friedman in his June 6, 2008 decision. Friedman's advice to Ganjian, a registered patent agent, but not a lawyer, was misleading, inappropriate and legally erroneous since proof of unavoidable abandonment is significantly more difficult than proof of unintentional abandonment and Section 1.137(b), which provides the "unintentional" basis for relief, no longer included a shorter time deadline than Section 1.137(a). Moreover, Plaintiff had already established that the abandonment was clearly unintentional with respect to the only entity that mattered, Nano.

41. This Petition, which the Examiner erroneously treated as having been filed solely under 37 C.F.R. §1.137(a) despite Ganjian's prudent refusal to completely abandon his original 1.137(b) basis, was again dismissed by the PTO, on January 6, 2009, solely because the more difficult "unavoidable" standard had purportedly not been established.

42. Thereafter, on February 17, 2009 Plaintiff filed yet another Renewed Petition under 37 C.F.R. 1.137(a), while again reserving its 1.137(b) basis.

43. This Petition was "denied" (a final ruling) on April 1, 2009, solely on the basis of Plaintiff's alleged failure to meet the "unavoidable" standard of 37 C.F.R. 1.137(a), with no mention of 37 C.F.R. 1.137 (b). The PTO stated that "the showing of record is inadequate to establish unavoidable delay within the meaning of 37 C.F.R. §1.137(a). The reasoning of the PTO through its Director, Office of Petitions, Charles A. Pearson, was explained as follows:

The record shows that there were three parties involved in the prosecution of the instant application at the time of abandonment. Dennis Beach [sic] (Beach) was the patent attorney, Jack Illare (Illare) was the Executive of the assignee, Nano Teknologies, LLC (Nano), and Dr. Lindsey, (Lindsey), an employee of Nano, who was apparently a go-between or liaison between Beach and Illare. Beach was getting instructions from Lindsey though Illare's employment contract specifically stated he was the responsible party for handling all patent matters. Petitioner states time and again that the application went abandoned due to Lindsey's misconduct. Petitioner states that Lindsey assured Illare that the patents were in

order when in fact he was not responding to Beech's request for instructions on how to respond to the final Office action. Beech made numerous requests to Lindsey on how to respond to the final Office action. With no instructions forthcoming from Lindsey, Beech elected to take no further action in regard to the final Office action and thus the application became abandoned.

Where the applicant permits a third party to control the prosecution of an application, the third party's decision whether or not to file a reply to avoid abandonment is binding on the applicant. See *Winkler*, 221 F. at 552, 138 USPQ at 667. Where an applicant enters an agreement with a third party for the third party to take control of the prosecution of an application, the applicant will be considered to have given the third party the right and authority to prosecute the application to avoid abandonment (or not prosecute), unless, by the express terms of the contract between applicant and the third party, the third party is conducting the prosecution of application for the applicant solely in a fiduciary capacity. See *Futures Technology Ltd. v. Quigg*, 684 F. Supp. 430, 431, 7 USPQ2d 1588, 1589 (E.D. Va. 1988). Otherwise, the applicant will be considered to have given the third party unbridled discretion to prosecute (or not prosecute) the application to avoid abandonment, and will be bound by the actions or inactions of such third party.

Petitioner argues that Lindsey was not a third party and that Illare's employment contract made it clear he was responsible for all patent matters. The record indicates that, irrespective of any employment agreement, Lindsey was left to make all patent decisions. Beech was totally dependent on Lindsey for instructions on how to proceed in prosecution of the instant application. Illare admits he depended on Lindsey in patent matters because he considered Lindsey very knowledgeable about patents and patent proceedings. The record establishes that Beech knew nothing of Illare's responsibilities in regard to patent matters and Illare did not even know who the patent attorney was for the instant application. Beech and Illare were totally insulated from each other. Illare admits in the renewed petition that he did not know any of the specifics in regard to the instant application to take appropriate action. The record fairly well establishes that Lindsey was in total control of the prosecution of the application, being the only one who was in a position to communicate instructions to Beech, the attorney of record. The record indicates Illare was not in a position to make any patent prosecution decisions in regard to the instant application. Illare depended on Lindsey's expertise, did not know exactly what patent application was subject to his control and apparently was content to not even know who the patent attorney was. The record indicates Illare effectively relinquished control of the prosecution of the instant application to Lindsey and thus made him the third party. As such, petitioner is bound by the actions (or inactions) of Lindsey. Furthermore, the record does not show that petitioner was reasonable and prudent in relying upon Lindsey to prosecute the application. Apparently, considerable acrimony existed between Illare and Lindsey with regard to Lindsey's alleged

misappropriation of \$400,000. Lindsey, by these actions, had shown that he was not a reliable and trustworthy employee. In fact, the record shows that Illare, despite knowing of Lindsey's actions, failed to properly supervise him. Given these facts and the attendant distrust and acrimony created by this situation, that Illare would believe statements of Lindsey regarding the prosecution of the application without some form of evidence or communication with/from either the USPTO or the patent attorney hired by Lindsey is not the care or diligence generally used and observed by prudent and careful men in relation to their most important business. Under the circumstances, petitioner has not carried his burden of proof to show that the delay was unavoidable as required by statute and by regulations of the Patent and Trademark Office. Petitioner is reminded that a Petition to Revive an application under 37 C.F.R. 1.137(a) cannot be granted where a Petitioner has failed to meet his burden of establishing unavoidable delay within the meaning of 37 C.F.R. 1.137(a) and 35 U.S.C. 133.

CONCLUSION

For the reasons given above, the delay in this case has not been shown to have been unavoidable within the meaning of 35 U.S.C. 133 and 137 C.F.R. 1.137 (a).

Accordingly, the application will not be revived under the provisions of 35 U.S.C. 133 and 37 C.F.R. 1.137 (a), and the case remains abandoned.

[Underlining and italics supplied by Plaintiff.]

44. The Petitions Director's determination that Lindsey was a "third party," rather than a fiduciary, with respect to Nano was clearly erroneous, arbitrary and capricious, both legally and factually. Accordingly, the Petitions Director's reliance on *Winkler*, rather than *Futures Technology* was also clearly erroneous, arbitrary and capricious. The Petitions Director's failure to even address the cited and applicable standard of 1.137(b) was also unlawful, arbitrary and capricious. This is particularly egregious since it was the PTO itself who urged Ganjian to rely on Section 1.137(a) rather than (b). Fortunately, Ganjian never completely abandoned reliance on 1.137(b), although the PTO treated all of the Petitions subsequent to Examiner Friedman's advice as having abandoned any reliance on 1.137(b).

45. According to footnote 1 of the PTO's April 1, 2009 decision "this decision may be viewed as a final agency action within the meaning of 5 U.S.C. §704 for purposes of seeking judicial review. See MPEP 1002.02. The provisions of 37 CFR 1.1.37(d) do not apply."

46. Because Petitions Director Pearson's April 1, 2009 decision was based upon a misunderstanding of applicable law regarding Lindsey's alleged status as a "third party" rather than a fiduciary, Plaintiff filed, on June 30, 2009, a Request for Reconsideration of the PTO's April 1, 2009 denial of Plaintiff's February 17, 2009 Renewed Petition. That Request for Reconsideration explained, *inter alia*, that Lindsey was not a "third party" as to Nano, but was clearly a fiduciary and that the Director's conclusion that there were "three parties" (not even including the only party, Nano) in the prosecution of the patent application at the time of abandonment was incorrect as a matter of law. The Request for Reconsideration further pointed out that this Court's decision in *Futures Technologies, Ltd. v. Quigg*, 684 F. Supp. 430, 431 (E.D. Va. 1988) is squarely on point once it is recognized that Lindsey was not a "third party" as to Nano, but was acting "in a fiduciary capacity" with respect to Nano and its investors.

47. On October 28, 2009, Petitions Director Pearson issued a further decision indicating that while "Petitioner's arguments regarding the previous decision are noted," the Request for Reconsideration would be denied. This decision further confirmed that the decision of April 1, 2009 "was a final agency action within the meaning of 5 U.S.C §704 for purposes of Petitioner's seeking judicial review...."

48. This Complaint seeks judicial review of that final agency action and, pursuant to APA §704, of each of the "preliminary, procedural, or intermediate agency action(s)" leading up to, incorporating, or incorporated by, that final agency action.

49. Based on the above facts and the additional facts contained in the record of this case at the PTO, Plaintiff submits that the Petitions Director's decision of April 1, 2009 and the other referenced decisions were contrary to law, arbitrary and capricious, and, to the extent any discretion was permitted, an abuse of that discretion.

50. The Director's legal errors include:

(1) the failure to recognize that Lindsey, as President of Nano, was not a "third party" as to Nano and was in fact a fiduciary with respect to Nano and its investors;

(2) the Director's decisions of January 6, April 1 and October 26, 2009 were erroneously based solely on 37 C.F.R. 1.137 (a) and provided no ruling with respect to the more applicable 37 C.F.R. 1.137 (b), despite the fact that 37 C.F.R. 1.137(b) had repeatedly been asserted as a basis for relief and had not been withdrawn despite the PTO's misleading advice to do so.

(3) the PTO's requirement, in its April 25, 2007 and June 6, 2008 decisions, that Plaintiff must submit a declaration or other proof evidencing "direct" or "first hand knowledge" of Lindsey's subjective state of mind in order to meet the "unintentional" standard of 1.137(b), was contrary to law, arbitrary and capricious because such evidence was unnecessary, irrelevant and impossible to obtain since Lindsey was dead and his personal state of mind was never the appropriate test of Nano's intentions in any event.

RELIEF SOUGHT

WHEREFORE, Plaintiff prays for a judgment:

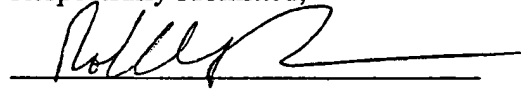
A. Declaring that the aforesaid final agency action by Defendant was contrary to law, arbitrary and capricious, and an abuse of discretion; and that Defendant has violated the provisions of the Administrative Procedure Act, Sections 701-706, by its actions;

B. An order directing the Defendants to reinstate the '328 patent application for continuing prosecution;

C. Awarding such other and further relief as the Court deems just and equitable under the circumstances of this case, including an award of attorney fees and costs as appropriate, to Plaintiff.

Dated: December 18, 2009

Respectfully submitted,



Robert A. Rowan, Va. Bar No. 29645
Michael L. Keenan, Va. Bar No. 32106
Michael E. Crawford, Va. Bar No. 39566
NIXON & VANDERHYE P.C.
901 N. Glebe Rd., Suite 1100
Arlington, Virginia 22203
Tel.: 703-816-4000
Fax: 703-816-4100

Exhibit A



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DTS 02-01

Peter Ganjian
Patent Law Agency, LLC
3146 North Verdugo Road
Glendale CA 91208-1665

Paper No. 20

MAILED

APR 01 2009

In re Application of
Alfred A. Margaryan
Application No. 10/054,328
Filed: January 21, 2002
For: FLUOROPHOSPHATE GLASS AND
METHOD FOR MAKING THEREOF

OFFICE OF PETITIONS

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(a) filed February 17, 2009, to revive the above-identified application.

The petition is **DENIED**.¹

BACKGROUND

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed November 18, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 19, 2004. A Notice of Abandonment was mailed July 1, 2004.

On June 6, 2006 a petition under 37 CFR 1.137(b) was filed. The petition was dismissed on April 25, 2007.

On July 23, 2007 a renewed petition under 37 CFR 1.137(b) was filed. The petition was dismissed on June 6, 2008.

On October 22, 2008 a petition under 37 CFR 1.137(a) was filed. The petition was dismissed on January 6, 2009.

¹ This decision may be viewed as a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See MPEP 1002.02. The provisions of 37 CFR 1.137(d) do not apply.

On February 17, 2009 the instant renewed petition under 37 CFR 1.137(a) was filed.

STATUTE AND REGULATION

35 U.S.C. § 133 states that:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

37 CFR 1.113 states in pertinent part that:

(a) On the second or any subsequent examination or consideration the rejection or other action may be made final, whereupon applicant's or patent owner's response is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Response to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the response to a final rejection or action must comply with any requirements or objections to form.

37 CFR 1.116 states that:

(a) After final rejection or action (§ 1.113) amendments may be made canceling claims or complying with any requirement of form which has been made. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after final rejection, and any proceedings relative thereto, shall not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135.

(b) If amendments touching the merits of the application or patent under reexamination are presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.

Application No. 10/054,328

(c) No amendment can be made as a matter of right in appealed cases. After decision on appeal, amendments can only be made as provided in § 1.198, or to carry into effect a recommendation under § 1.196.

37 CFR 1.135 states in pertinent part:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

37 CFR 1.137(a) provides:

Unavoidable. Where the delay in reply was unavoidable, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a Nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) The petition fee as set forth in § 1.17(l);

(3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

OPINION

Petitioner requests reconsideration in that the delay in filing a timely response to the final Office action mailed November 18, 2003 was unavoidable due to "inappropriate, unethical, fraudulent, deceitful, and unlawful" conduct of Dr. Lindsey.

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable". 35 U.S.C. § 133. Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word unavoidable ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.²

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."³ Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay.⁴

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.⁵

² Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

³ Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

⁴ Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

⁵ Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

The record shows that there were three parties involved in the prosecution of the instant application at the time of abandonment. Dennis Beach (Beach) was the patent attorney, Jack Illare (Illare) was the Executive of the assignee, Nano Teknologies, LLC (Nano) and Dr. Lindsey (Lindsey), an employee of Nano who was apparently a go-between or liaison between Beech and Illare. Beech was getting instructions from Lindsay although Illare's employment contract specifically stated he was the responsible party for handling all patent matters. Petitioner states time and again that the application went abandoned due to Lindsey's misconduct. Petitioner states that Lindsey assured Illare that the patents were in order when in fact he was not responding to Beech's request for instructions on how to respond to the final Office action. Beech made numerous requests to Lindsey on how to respond to the final Office action. With no instructions forthcoming from Lindsey, Beech elected to take no further action in regard to the final Office action and thus the application became abandoned.

Where the applicant permits a third party to control the prosecution of an application, the third party's decision whether or not to file a reply to avoid abandonment is binding on the applicant. See Winkler, 221 F. at 552, 138 USPQ at 667. Where an applicant enters an agreement with a third party for the third party to take control of the prosecution of an application, the applicant will be considered to have given the third party the right and authority to prosecute the application to avoid abandonment (or not prosecute), unless, by the express terms of the contract between applicant and the third party, the third party is conducting the prosecution of the application for the applicant solely in a fiduciary capacity. See Futures Technology Ltd. V. Quigg, 684 F. Supp. 430, 431, 7 USPQ2d 1588, 1589 (E.D. Va. 1988). Otherwise, the applicant will be considered to have given the third party unbridled discretion to prosecute (or not prosecute) the application to avoid abandonment, and will be bound by the actions or inactions of such third party.

Petitioner argues that Lindsey was not a third party and that Illare's employment contract made it clear he was responsible for all patent matters. The record indicates that, irrespective of any employment agreement, Lindsey was left to make all patent decisions. Beech was totally dependent on Lindsey for instructions on how to proceed in prosecution of the instant application. Illare admits he depended on Lindsey in patent matters because he considered Lindsey very knowledgeable about patents and patent proceedings. The record establishes that Beech knew nothing of Illare's responsibilities in regard to patent matters and Illare did not even know who the patent attorney was for the instant application. Beech and Illare were totally insulated from each other. Illare admits in the renewed petition that he did not know any of the specifics in regard to the instant application to take appropriate action. The record fairly well establishes that Lindsey was in total control of the prosecution of the application, being the only one who was in a position to communicate instructions to Beech, the attorney of record. The record indicates Illare was not in a position to make any patent prosecution decisions in regard to the instant application. Illare depended on Lindsey's expertise, did not know exactly what patent application was subject to his control and apparently was content to not even know who the patent attorney was. The record indicates Illare effectively relinquished control of the

prosecution of the instant application to Lindsey and thus made him the third party. As such, petitioner is bound by the actions (or inactions) of Lindsey.

Furthermore, the record does not show that petitioner was reasonable and prudent in relying upon Lindsey to prosecute the application. Apparently, considerable acrimony existed between Illare and Lindsey with regard to Lindsey's alleged misappropriation of \$400,000. Lindsey, by these actions, had shown that he was not a reliable and trustworthy employee. In fact, the record shows that Illare, despite knowing of Lindsey's actions, failed to properly supervise him. Given these facts and the attendant distrust and acrimony created by this situation, that Illare would believe statements of Lindsey regarding the prosecution of the application without some form of evidence or communication with/from either the USPTO or the patent attorney hired by Lindsey is not the care or diligence generally used and observed by prudent and careful men in relation to their most important business.

Under the circumstances, petitioner has not carried his burden of proof to show that the delay was unavoidable as required by statute and by regulations of the Patent and Trademark Office. Petitioner is reminded that a petition to revive an application under 37 CFR 1.137(a) cannot be granted where a petitioner has failed to meet his burden of establishing unavoidable delay within the meaning of 37 CFR 1.137(a) and 35 USC 133. *Haines V. Quigg*, 673 F. Supp. 314, 5 USPQ2 1130 (N.D. Ind. 1987).

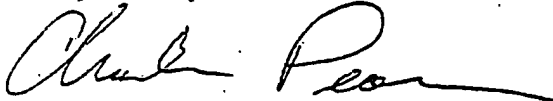
CONCLUSION

For the reasons given above, the delay in this case has not been shown to have been unavoidable within the meaning of 35 USC 133 and 37 CFR 1.137(a).

Accordingly, the application will not be revived under the provisions of 35 U.S.C. 133 and 37 CFR 1.137(a), and the case remains abandoned.

This abandoned file is being forwarded to the Files Repository

Telephone inquiries related to this decision should be directed to Carl Friedman at 571-272-6842.



Charles A. Pearson
Director, Office of Petitions

Exhibit B



UNITED STATES PATENT AND TRADEMARK OFFICE

4
Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NIXON & VANDERHYE, P.C.
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

Paper No. 22

MAILED

OCT 28 2009

In re Application of
Alfred A. Margaryan
Application No. 10/054,328
Filed: January 21, 2002
Attorney Docket No. RAR-5423-2 ✓

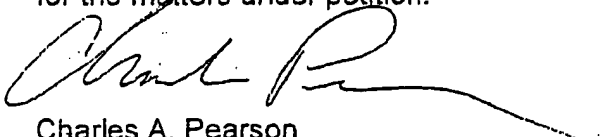
OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition filed June 30, 2009 requesting reconsideration of the Decision mailed April 1, 2009 denying the renewed petition under 37 CFR 1.137(a) filed February 17, 2009.

The petition is **DENIED**.

The decision by the Director was fully and finally treated in the decision of April 1, 2009. The decision clearly stated it was a final agency action within the meaning of 5 U.S.C. § 704 for purposes of petitioner's seeking judicial review, and further, that the USPTO would not further consider or reconsider this matter.

Petitioner's arguments regarding the previous decision are noted. While petitioner may not agree with the USPTO's actions in this case, full administrative review was provided for the matters under petition.


Charles A. Pearson
Director, Office of Petitions

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/054,328
Filing Date : 20 JAN 2002
First Named Inventor : Alfred A. MARGARYAN
Assignee : AFO RESEARCH, INC.
Art Unit : 1755
Examiner : Elizabeth A. BOLDEN

REQUEST FOR RECONSIDERATION

This is a Request For Reconsideration of the Decision mailed April 1, 2009 denying Petitioner's renewed petition to revive the above-identified application under 37 CFR 1.137(a) and (b) filed February 17, 2009.

The April 1, 2009 denial of Petitioner's February 17, 2009 renewed petition to revive is predicated on a misunderstanding of corporate law principles and the fiduciary obligations of corporate officers and directors, such as Dr. Lindsey, to their employer, i.e., Nano Technologies, LLC, and its shareholders, e.g., Mr. Jack Illare. These common law, statutory and contractual principles preclude treating Dr. Lindsey as a "third party" rather than as a corporate and contractual fiduciary.

The constraints placed on Lindsey's authority by Nano's Limited Liability Company Operating Agreement, authenticated by the Supplemental Declaration of Mr. Illare

attached hereto, further preclude any conclusion that Lindsey was “in total control” of Nano’s single most important asset, the application at issue, and more particularly, its intentional abandonment, as asserted in the April 1, 2009 Denial.

These facts and legal principles readily distinguish the *Winkler* case relied on by the Director of Office of Petitions (“Director”) and places this case squarely within the holdings of the *Future Technology* case also cited, but effectively ignored, by the Director. In the April 1, 2009 Denial, the Director states:

“The record shows that there were *three parties* involved in the prosecution of the patent application at the time of abandonment. Dennis Beach [sic] ... the patent attorney, Jack Illare (Illare) was the Executive of the assignee, Nano Teknologies, LLC (Nano), and Dr. Lindsey (Lindsey), an employee of Nano who was apparently a go-between or liaison between Beech and Illare.... the application was abandoned due to Lindsey’s misconduct....

Where the applicant permits a *third party* to control the prosecution of an application, the *third party’s* decision whether or not to file a reply to avoid abandonment is binding on the applicant. See *Winkler*, 221 F. Supp. at 552, 138 USPQ at 667. Where an applicant enters an *agreement* with a *third party* for the *third party* to take control of the prosecution an application, the applicant will be considered to have given the *third party* the *right* and *authority* to prosecute the application to avoid abandonment (or not prosecute) *unless*, by the express terms of the contract, the *third party* is conducting the prosecution of the applicant solely in a *fiduciary capacity*. See *Futures Technology Ltd. V. Quigg*, 684 F. Supp. 430, 431, 7USPQ2d 1588, 1589 (E.D.Va. 1988). Otherwise, the applicant will be considered to have given the *third party* *unbridled discretion* to prosecute (or not prosecute) the application to avoid abandonment, and will be bound by the inactions or inactions of the *third party*.” (Italics added, underscoring the Director’s.)

Here the only *party* was a corporate entity, Nano.¹ Lindsey and Illare were each officers, directors and employees of Nano at all times relevant. They were not and are not *third parties* with respect to Nano, nor distinct from it. A corporation can only act through its duly authorized officers and employees.² Moreover, corporate officers and directors, such as Lindsey, are fiduciaries whose powers are “powers in trust” with respect to the business and assets of the corporation for the benefit of shareholders to whom such officers and directors owe *fiduciary duties*, including the duties of good faith, due care and the duty to act *intra vires* i.e., within their respective authority.³ Corporate officers and directors can only act within the authority granted to them by statute, the corporation’s articles and by-laws (in this case, the LLC Operating Agreement), or their employment contracts.⁴ ⁵Accordingly, Lindsey at no time had the “unbridled discretion” erroneously assumed to exist by the Director. By law and contract, Lindsey’s actions were at all times circumscribed by Nano’s Operating Agreement and by his fiduciary duties to his corporate employer, Nano, and its principle shareholder, Illare.

¹ On June 2, 2009 Nano assigned its interest in the instant application to AFO Research, Inc., also a Florida Limited Liability Company, of which Jack Illare is the Managing Member. AFO Research, Inc. therefore assumes the role of Petitioner in this case.

² “It is axiomatic ‘that a corporation can only act through its officers and agents . . .’” *Country Manors Ass’n, Inc. v Master Antenna Systems, Inc.*, 534 So.2d 1187, 1191 (Fla.App. 4 Dist., 1988), quoting *Kent Insurance Company v Schroeder*, 469 So.2d 209, 210 (Fla. 5th DCA 1985), quoting in turn, *Browning v State*, 101 Fla. 1051, 133 So. 847, 848 (1931).

³ The Florida Limited Liability Company Act provides that “each member and managing member shall owe a *duty of loyalty* and a *duty of care* to the limited liability company and the other members of the limited liability company.” 2000 Fla. Stat. § 608, 4225(1) (emphasis added). See also, *Henn, Law of Corporations*, (2d ed.1970), at sections 233, 234 and 235, at pages 453 *et. seq.* *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949); *Pepper v. Litton*, 308 U.S. 295, 306 (1949); *Chenery Corporation v. SEC.* 128 F.2d 303,309, 314, n. 19 (D.C. Cir. 1942) *cert. granted*, 317 U.S. 609, *remanded*, 318 U.S. 80.

⁴ Although Lindsey’s employment contract has been lost or destroyed by Lindsey, who left both the company and the country and died in the Philippines, there is no reason to believe that his contract was different in any material respect from Illare’s contract, which is in the record, regarding his fiduciary obligations with regard to Nano’s intellectual property.

⁵ “A corporation must act in accordance with its articles of incorporation and duly adopted by-laws.” *Word of Life Ministry v Miller*, 778 So.2d 360, 363 (Fla. App. 1 Dist., 2001). “The corporation and its directors and officers are bound by and must comply with the charter and bylaws.” *Word of Life Ministry v Miller*, 778 So.2d 360, 363 (Fla. App. 1 Dist., 2001), quoting *Yarnall Warehouse & Transfer v Three Ivory Bro. Moving Co.*, 226 So. 2d 887, 890 (Fla. 2d DCA 1969).

This situation is entirely unlike the *Winkler* case relied upon by the Director in which an inventor attempted to revive two applications that had been intentionally abandoned by the legally appointed receiver of a *third party* corporation to whom the plaintiff, had contractually granted the authority to prosecute those applications --without any constraints. There were no fiduciary obligations owed to the plaintiff by that third party corporation or by its statutorily appointed assignee/receiver. The receiver's obligations were to the corporation's creditors, not the plaintiff. Pursuant to that obligation and his statutory authority, the receiver made a conscious decision, to which the plaintiff did not object, to intentionally abandon the applications at issue. These facts bear little resemblance to this case.⁶

By contrast, Lindsey had both circumscribed authority and clear fiduciary obligations to Nano, and its shareholder, Illare, under Nano's Operating Agreement, Florida's Limited Liability Company Act and the terms of his employment agreement.⁷ This circumstance not only distinguishes *Winkler*, but clearly implicates *Futures Technology*, which bears striking similarities to this case. There, the Eastern District of Virginia held there could be no abandonment by one in breach of a fiduciary duty to the equitable owner of the patent. *Id.*, at 431. In that case the plaintiff's predecessor entered into a contract with a third party to develop certain inventions and prosecute patent applications *with funds provided by the plaintiff (here Illare), holding any patents it obtained in a fiduciary capacity* for the plaintiff's predecessor, who was to be the

⁶ The only person to whom *Winkler* has any application in the instant case is the inventor, Alfred Margaryan, who agreed to *assign* "all of his right title and interest" in the patent application to Nano, thereby giving Nano, the right to prosecute or not prosecute the instant application with no obligation to Margaryan. Margaryan is not a party to this case.

⁷ See footnote 3.

equitable owner of the inventions and patent applications. That equitable owner “had a right to expect [the fiduciary’s] performance under [its] contract,” just as Nano and Illare had the right to expect Lindsey’s performance under applicable corporate principles and Nano’s Operating Agreement, to which Lindsey was a signatory.

In *Futures Technology*, as here, the aggrieved party “became troubled by [the fiduciary’s] performance,” “requested information from [the fiduciary]” and the its patent prosecution “attorney [who] refused to divulge information ...based on the attorney’s confidential relationship with” [the fiduciary”] ... regarding the status of the application,” and “was given assurances [by the fiduciary] that the work was being done on the application, when in fact, such work was not being done.” *Id.* These facts virtually mirror the present case.

On these facts the Petitioner correctly asserted that the ensuing abandonment had been both unintentional and unavoidable. The Commissioner disagreed. The Court overruled the Commissioner, holding that the plaintiff was the equitable owner of the application and that *it* never intended to abandon the application, citing the plaintiff’s inquiries and the false assurances made to it by the fiduciary. This holding, which is controlling precedent in the Eastern District of Virginia, where review of the Director’s decision will be venued, is directly applicable to the instant case.

As noted, Dr. Lindsey’ fiduciary obligations to Nano and Illare and his lack of authority to unilaterally abandon the application at issue on behalf of Nano are

established by common law corporate principles, by the Florida Limited Liability Company Act,⁸ and by Nano's LLC Operating Agreement. Allure's August 15, 2003 Employment Agreement, which was also signed by Lindsey as President of Nano, further provides that:

"[A]ll inventions...conceived during or reduced to practice during working hours or using the Company's data or facilities... related to the Company's present or planned business ... shall be the sole property of the Company and shall at all times and for all purposes be regarded and held by the Executive in a *fiduciary capacity* for the sole benefit of the Company." (emphasis added)

As noted in footnote 3, Lindsey's counterpart employment agreement has not been located as a result of his departure from the company, his move to the Philippines and his subsequent death. However, there is no reason to assume that Lindsey's contract conflicts with these provisions, which in turn reflect the parallel, but broader provisions of Florida's Limited Liability Company Act, which provides that all such property (not just intellectual property) is the property of the limited liability company.⁹

Lindsey's lack of authority to unilaterally dispose of Nano's major corporate asset, i.e., the patent application at issue, which he had a fiduciary obligation to preserve and protect, is further established by Nano's Limited Liability Company Operation Agreement, which provides:

"The Company shall engage in the business of developing, producing and selling patent licenses ...in nano material science.
(Op. Agr. para. 1)

⁸ The Florida Limited Liability Company Act provides that "each member and managing member shall owe a *duty of loyalty* and a *duty of care* to the limited liability company and the other members of the limited liability company." 2000 Fla. Stat. §608, 4225(1). (emphasis added)

⁹ See e.g. Florida Limited Liability Company Act, Sections 608.425 (1) and (2).

The *Company's business and affairs* (as distinguished from its day-to-day operations) *shall be managed by a Board of Managers*. Each member of the Board of Managers shall be a "manager" as defined in the Florida Limited Liability Company Act. The Board of Managers shall have the same power, authority and responsibility as the board of directors of a corporation. The initial Board of Managers will consist of *two members*: Lonnie Lindsey (Lindsey) and Jack Illare III (Illare) as Chairman of the Board.
(Op. Agr. para. 2.1(a), emphasis added)

The Board of Managers shall act upon all matters by majority ... (...*unanimous* in the case of two managers) vote ... [N]o action may be taken ... unless *all* Members of the Board are first given notice of, and *a reasonable opportunity to comment* upon, the proposed action.
(Op. Agr. para. 2.1(b), emphasis added)

The Board of Managers has appointed the following individuals to the offices indicated:

Lindsey, President
Illare, Chairman of the Board/Managing Director ...

All contracts and obligations of the business arising in the ordinary course shall require the Managing Director's approval.
(Op. Agr. para. 2.2 emphasis added)

The record is clear that Illare (as Managing Director) never gave his approval for any abandonment of Nano's major asset, the instant application, nor voted, as one of the two members of the Board of Managers, for any such abandonment as required by Nano's Operating Agreement for any such corporate action. Accordingly, whether the abandonment of Nano's major corporate asset is viewed as part of Nano's "business and affairs (as distinguished from its day-to-day operations)" or as simply "arising in the

ordinary course” of Nano’s business, Nano, as the only “party” to this Petition,¹⁰ never acquiesced in any such abandonment. Moreover, and as previously established, Illare had also been vested with corporate “responsib[ility] for day to day duties, as well as the strategic planning” of Nano, by August 15, 2003. There is no evidence whatsoever that Illare acquiesced in the abandonment of the instant application in any of these capacities, as required by all of Nano’s controlling corporate documents

Thus, there has been no *intentional* abandonment by the legal owner of the application and only actual “party,” Nano, since Nano could only make the decision to abandon by notice to and consent or vote by Illare under its Operating Agreement. The abandonment was *also* unavoidable as Nano was *prevented* from responding to the office action of which its Managing Director was not aware by the misconduct of Lindsey who did not have the corporate authority to make the decision to abandon. Lindsey was clearly in breach of his fiduciary obligations to Nano and Illare, the majority stockholder and the sole provider of funding (\$1,000,000) for the application and thus the equitable owner of the application, just as in *Future Technology*. Under these facts, the purported abandonment by Nano was both unintentional and unavoidable under 37 CFR 1.137(a) and (b).

¹⁰ AFO is, by virtue of the recent assignment of all of Nano’s right, title and interest, Nano’s successor and hence the same “party.” Nano’s patent prosecution attorney, Beech, is no more a “third party,” as erroneously asserted by the Director, than AFO’s current attorneys. Moreover, as Nano’s attorneys, both this firm and Beech had and have well defined fiduciary and ethical responsibilities to Nano for matters entrusted to them under applicable ethical canons governing such legal representations. More importantly, there is no evidence that Beech intended to abandon the application. On the contrary, he made multiple good faith attempts to obtain necessary information and instructions to reply to the office action at issue, but was unavoidably prevented from doing so by Lindsey’s failure to respond to his repeated inquiries and requests for instructions.

Addressing the Director's contention that Nano and its principal stockholder, Illare, did not exercise due diligence in their reliance of Lindsey to act in accordance with his fiduciary responsibilities, it must be noted that, unlike Lindsey's actions with respect to his diversion of Nano's funds to projects in which he had a self-interest outside of Nano, Lindsey's own self-interest was co-extensive with Nano's with respect to the instant application and mitigated in favor of preserving the application since he too was a stockholder in Nano and would have profited from the application's issuance as a patent and its commercialization. See Suppl. Declaration Illare at ¶ 4. That fact logically distinguishes the two situations and more than adequately explains Nano's and Illare's continued reliance on Lindsey in this latter respect.

It should also be recognized that while the Applicant's last two papers emphasize reliance on Section 1.137(a) in accordance with the suggestion of Petitions Examiner Freidman in his June 6, 2008 decision (at page 3), Petitioner has never abandoned its reliance on subsection (b), as evidenced by, *inter alia*, the first and the last paragraphs of Petitioner's February 9, 2009 paper. It should also be recognized that Mr. Friedman's recommended reliance on subsection (a), on which Petitioner's patent agent understandably relied, was misconceived since it only raised Petitioner's burden of proof without any countervailing advantage as there are no longer any time limits mandating such a choice. As a result of this misdirection by the designated representative of the PTO, Petitioner's emphasis shifted and, more importantly, the Director's latest decision addresses *only* the more stringent unavoidable of CFR 1.137 (a), rather than the less stringent unintentional standard of 1.137 (b). This fact alone should require

reconsideration of Petitioner's evidence in light of the unintentional standard of subsection (b).

For the foregoing reasons, it is respectfully submitted that the Director's final denial is based on errors of law, a failure to properly apply the law to the facts, and by a failure to employ the unintentional standard of CFR 1.137 (b). Here, the facts, the law and the equities all converge to require relief from the unintentional and unavoidable consequences of Lindsey's breach of his fiduciary obligations to AFO's predecessor, Nano and, through Nano, to Illare.

In summary, the abandonment of the application has been shown to have been both unintentional and unavoidable and, accordingly, Petitioner respectfully requests reconsideration of the Director's April 1, 2009 Decision denying the renewed petition and reinstatement of the application at issue based on Nano's unintentional and/or unavoidable abandonment, pursuant to 37 CFR 1.137(a) and/or (b).

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /Michael J. Keenan/
Michael J. Keenan
Reg. No. 32,106

MJK:sab
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/054,328
Filing Date : 20 JAN 2002
First Named Inventor : Alfred A. MARGARYAN
Assignee : AFO RESEARCH, INC.
Art Unit : 1755
Examiner : Elizabeth A. BOLDEN
Office Action Mailing Date : 01 JUL 2004

Title: **FLUOROPHOSPHATE GLASS AND METHOD FOR MAKING THEREOF**

SECOND SUPPLEMENTAL DECLARATION OF JACK JOSEPH ILLARE III

UNDER 37 CFR § 1.137 (a) and (b)

Attention: Office of Petitions

~~Mail Stop: Petition~~

Commissioner for Patents

P.O. Box 1450


Alexandria, VA 22313-1450

TO THE COMMISSIONER FOR PATENTS:

The following is a Second Supplemental Declaration in support of a concurrently filed Request for Reconsideration relating to the Petition for Revival of the above-identified application establishing unintentional and unavoidable delay under 37 CFR § 1.137(a) and (b). The purpose of this supplemental statement is to bring certain facts, including the relevant provisions of Nano Technologies Limited Liability Company Operating Agreement to the Director's and Commissioner's attention in connection with the Applicant's explanation why the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR § 1.137(a) and (b) was both unintentional and unavoidable.

1. At all times relevant, I. was Chairman of the Board/Managing Director of Nano Technologies, LLC ("Nano"). I am presently the Managing Member of AFO Research, Inc. ("AFO"), the current assignee, from of the instant application. A true copy of the June 2, 2009 assignment from Nano to AFO is attached to the Revocation and New Power of Attorney filed concurrently herewith.

2. Attached is a true and correct copy of Nano Technologies' Limited Liability Company Operating Agreement.
3. As shown by the Operating Agreement, I contributed \$1,000,000 to Nano in return for 100,000 Investor Common Units of Nano. See Paragraphs 3.1 (a) and 3.2 and Exhibit B to that Agreement. I was the only partner of "Red Angel Partners," the entity listed in that Exhibit B to the Operating Agreement.
4. As further shown by Exhibit A to the Operating Agreement, the holders of the 6,900,000 Founder Common Units included myself and Lonnie Lindsey and two other gentlemen who subsequently left Nano. As indicated in Paragraph 3.1 (a) of the Operating Agreement, the Founder Common Units and Investor Common Units are identical except as provided elsewhere in the Agreement. As provided in Paragraph 4.1 of the Agreement, any distributions of cash, securities, or other property was to be made in proportion to the number of common units, both Investor and Founder Units, once the net asset value of Nano reaches 110% of the aggregate capital contribution accounts of the members, those capital contributions to be returned prior to such distributions.
5. The undersigned hereby declares that all statements made herein of the party's own knowledge are true, all statements made herein on information and belief are believed to be true, and all statements made herein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, over covers up by any trick, scheme or device or material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark, registration, or certificate resulting therefrom.



Jack Joseph Illare, III

06/29/09
Date

LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
NANO TEKNOLOGIES LLC

This is the Limited Liability Company Agreement (the "Agreement") of Nano Teknologies LLC (the "Company"). This Agreement was originally executed on January 1, 2001, revised on April 11, 2002 and currently revised August 15, 2003.

The parties to the agreement are those parties set forth on Exhibit "A". The members and all persons and entities hereafter admitted as a member of the Company in accordance with this agreement, are referred to as the "Members."

1.0 THE COMPANY AND ITS BUSINESS.

1.1 THE COMPANY.

The Company was formed by filing its Articles of Organization as a Florida Limited Liability Company on August 22, 2000 to pool certain of the Members' resources in the spirit of partnership to develop and market various technologies.

1.2 BUSINESS.

The Company shall engage in the business of developing, producing and selling patent licenses agreements for breakthrough technologies in nano material science, TFT and new generation vitreous materials. Research and development will mainly be directed towards technologies in the electronic/optical field of science. These technologies will focus on optical data storage, specialty vitreous material and Nano scale TFT in optics and electronics. The company is authorized to engage in other business endeavors as determined by the Company's Board of Managers (defined below).

2.0 MANAGEMENT OF THE COMPANY AND RELATED MATTERS.

2.1 BOARD OF MANAGERS.

(a) The Company shall be a "manager-managed company" as defined in the Florida Limited Liability Company Act. The Company's business and affairs (as distinguished from its day-to-day operations) shall be managed by a Board of Managers. Each member of the Board of Managers shall be a "manager" as defined in the Florida Limited Liability Company Act. The Board of Managers shall have the same power, authority and responsibility of the board of directors of a corporation. The initial Board of Managers will consist of two members: Lonnie Lindsey (Lindsey) and Jack Illare III (Illare) as Chairman of the Board. The Board of Managers shall consist of between two and seven members; provided, however, until such time as the Members shall increase the number of members of the Board of Managers as provided in Section 2.1(e), the number of members of the Board of Managers shall be two.

(b) The Board of Managers shall act on all matters by majority (or unanimous in the case of two managers) vote of the total number of members of the board. Action may be taken by the Board of Managers at a meeting (at which members of the board may participate in person or by telephone), by polling all of the members of the board without a meeting, or by a writing signed by a majority of the members of the board, except that no action may be taken by a writing unless all Members of the board are first given notice of, and a reasonable opportunity to comment upon, the proposed action. The Board of Managers shall hold meetings at such intervals, and shall adopt such rules of procedure, as it may from time to time determine. Any member of the Board of Managers may designate another person to act as his or her substitute at any meeting or in connection with any action to be taken by the Board of Managers. Members of the Board of Managers shall not be compensated for their services as such.

(c) Without limiting the generality of the foregoing, the Board of Managers may at any time determine to effect an initial public offering of interests in the Company or of an entity to which the Company may transfer all or a portion of the assets and business of the Company, all on such terms and conditions as the Board of Managers may



LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

NANO TEKNOLOGIES, LLC

August 15, 2003
3rd Revision

LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
NANO TEKNOLOGIES LLC

This is the Limited Liability Company Agreement (the "Agreement") of Nano Teknologies LLC (the "Company"). This Agreement was originally executed on January 1, 2001, revised on April 11, 2002 and currently revised August 15, 2003.

The parties to the agreement are those parties set forth on Exhibit "A". The members and all persons and entities hereafter admitted as a member of the Company in accordance with this agreement, are referred to as the "Members."

1.0 THE COMPANY AND ITS BUSINESS.

1.1 THE COMPANY.

The Company was formed by filing its Articles of Organization as a Florida Limited Liability Company on August 22, 2000 to pool certain of the Members' resources in the spirit of partnership to develop and market various technologies.

1.2 BUSINESS.

The Company shall engage in the business of developing, producing and selling patent licenses agreements for breakthrough technologies in nano material science, TFT and new generation vitreous materials. Research and development will mainly be directed towards technologies in the electronic/optical field of science. These technologies will focus on optical data storage, specialty vitreous material and Nano scale TFT in optics and and electronics. The company is authorized to engage in other business endeavors as determined by the Company's Board of Managers (defined below).

2.0 MANAGEMENT OF THE COMPANY AND RELATED MATTERS.

2.1 BOARD OF MANAGERS.

(a) The Company shall be a "manager-managed company" as defined in the Florida Limited Liability Company Act. The Company's business and affairs (as distinguished from its day-to-day operations) shall be managed by a Board of Managers. Each member of the Board of Managers shall be a "manager" as defined in the Florida Limited Liability Company Act. The Board of Managers shall have the same power, authority and responsibility of the board of directors of a corporation. The initial Board of Managers will consist of two members: Lonnie Lindsey (Lindsey) and Jack Illare III (Illare) as Chairman of the Board. The Board of Managers shall consist of between two and seven members; provided, however, until such time as the Members shall increase the number of members of the Board of Managers as provided in Section 2.1(e), the number of members of the Board of Managers shall be two.

(b) The Board of Managers shall act on all matters by majority (or unanimous in the case of two managers) vote of the total number of members of the board. Action may be taken by the Board of Managers at a meeting (at which members of the board may participate in person or by telephone), by polling all of the members of the board without a meeting, or by a writing signed by a majority of the members of the board, except that no action may be taken by a writing unless all Members of the board are first given notice of, and a reasonable opportunity to comment upon, the proposed action. The Board of Managers shall hold meetings at such intervals, and shall adopt such rules of procedure, as it may from time to time determine. Any member of the Board of Managers may designate another person to act as his or her substitute at any meeting or in connection with any action to be taken by the Board of Managers. Members of the Board of Managers shall not be compensated for their services as such.

(c) Without limiting the generality of the foregoing, the Board of Managers may at any time determine to effect an initial public offering of interests in the Company or of an entity to which the Company may transfer all or a portion of the assets and business of the Company, all on such terms and conditions as the Board of Managers may

determine. The Members shall take such action and execute such instruments as the Board of Managers may reasonably require in connection any such the initial public offering; provided, however, that any restrictions on sales of securities by Members in such offering shall apply also to sales of securities held by employees, managers, directors, or other insiders of the Company.

(d) For so long as a Member holds not less than 500,000 Common Units (defined below), such Member shall have the right, at such Member's expense, to visit and inspect any of the properties of the Company, to examine its books of account and records, and to discuss its affairs, finances and accounts with its officers, all at reasonable times, but in no event more frequently than once per fiscal quarter; provided, however, that the Company shall not be obligated to provide any information that it reasonable considers to be a trade secret or to be confidential.

(e) The Board of Managers will be elected annually by a vote of the Members holding a majority of the outstanding Common Units. Each Common Unit will have one vote. At such annual election, the members holding a majority of the outstanding Common Units may vote to increase the number of members of the Board of Managers, but said Board of Managers shall not consist of more than seven members. The date and location of such annual vote shall be determined by the Board of Managers.

2.2 OFFICERS

The Board of Managers may appoint such officers of the Company as the board determines desirable, including, but not limited to, a president, one or more vice-presidents, a secretary, a treasurer, and one or more assistant secretaries and assistant treasurers. The officers of the Company need not be Members and shall have the powers and duties delegated to them by the Board of Managers. The officers of the Company shall serve at the pleasure of the Board of Managers. The Board of Managers has appointed the following individuals to the offices indicated:

Lindsey, President
Illare, Chairman of the Board/Managing Director

Illare will be responsible for managing the Company's day-to-day operations. Lindsey and Illare shall be the authorized signatory group of the Company with respect to banking relationships and be authorized to sign checks on behalf of the company. All checks will require the signatures of the two members of the signatory group. All contracts and obligations of the business arising in the ordinary course shall require the Managing Director's approval.

2.3 SALES REPRESENTATION; SHARED SERVICES

The Company's Managing Director may retain other agents or hire salespeople for the sale, licensing or development of the Company's technologies. Provided however, any proposed contract for the payment of commissions to any agent, salesperson or consultant for the sale, licensing or development of any technology shall be approved by the Board of Managers and must be payable in accordance with customary practice in the industry.

2.4 EMPLOYMENT AGREEMENTS

The Company has entered into no other employment agreements.

2.5 OTHER ACTIVITIES OF MEMBERS

Any Member, including the members of the Board of Managers, may engage in or have an interest in other business ventures of any kind, independently or with others, and neither the Company nor any other Member shall have any rights in or to those independent ventures. The foregoing provision is subject to the provisions of Section 12.3 and any contrary provision of any employment agreement with the Company to which any Member or member of the Board of Managers may be a party.

LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
NANO TEKNOLOGIES LLC

This is the Limited Liability Company Agreement (the "Agreement") of Nano Teknologies LLC (the "Company"). This Agreement was originally executed on January 1, 2001, revised on April 11, 2002 and currently revised August 15, 2003.

The parties to the agreement are those parties set forth on Exhibit "A". The members and all persons and entities hereafter admitted as a member of the Company in accordance with this agreement, are referred to as the "Members."

1.0 THE COMPANY AND ITS BUSINESS.

1.1 THE COMPANY.

The Company was formed by filing its Articles of Organization as a Florida Limited Liability Company on August 22, 2000 to pool certain of the Members' resources in the spirit of partnership to develop and market various technologies.

1.2 BUSINESS.

The Company shall engage in the business of developing, producing and selling patent licenses agreements for breakthrough technologies in nano material science, TFT and new generation vitreous materials. Research and development will mainly be directed towards technologies in the electronic/optical field of science. These technologies will focus on optical data storage, specialty vitreous material and Nano scale TFT in optics and and electronics. The company is authorized to engage in other business endeavors as determined by the Company's Board of Managers (defined below).

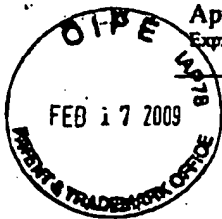
2.0 MANAGEMENT OF THE COMPANY AND RELATED MATTERS.

2.1 BOARD OF MANAGERS.

(a) The Company shall be a "manager-managed company" as defined in the Florida Limited Liability Company Act. The Company's business and affairs (as distinguished from its day-to-day operations) shall be managed by a Board of Managers. Each member of the Board of Managers shall be a "manager" as defined in the Florida Limited Liability Company Act. The Board of Managers shall have the same power, authority and responsibility of the board of directors of a corporation. The initial Board of Managers will consist of two members: Lonnie Lindsey (Lindsey) and Jack Illare III (Illare) as Chairman of the Board. The Board of Managers shall consist of between two and seven members; provided, however, until such time as the Members shall increase the number of members of the Board of Managers as provided in Section 2.1(e), the number of members of the Board of Managers shall be two.

(b) The Board of Managers shall act on all matters by majority (or unanimous in the case of two managers) vote of the total number of members of the board. Action may be taken by the Board of Managers at a meeting (at which members of the board may participate in person or by telephone), by polling all of the members of the board without a meeting, or by a writing signed by a majority of the members of the board, except that no action may be taken by a writing unless all Members of the board are first given notice of, and a reasonable opportunity to comment upon, the proposed action. The Board of Managers shall hold meetings at such intervals, and shall adopt such rules of procedure, as it may from time to time determine. Any member of the Board of Managers may designate another person to act as his or her substitute at any meeting or in connection with any action to be taken by the Board of Managers. Members of the Board of Managers shall not be compensated for their services as such.

(c) Without limiting the generality of the foregoing, the Board of Managers may at any time determine to effect an initial public offering of interests in the Company or of an entity to which the Company may transfer all or a portion of the assets and business of the Company, all on such terms and conditions as the Board of Managers may



Application No.: 10/054,328
Express Mail: EH 161914101 US

Fluorophosphate glass and method for
making thereof

#19

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/054,328
5 Filing Date : 20 JAN 2002
First Named Inventor : Alfred A. MARGARYAN
Petition Examiner : David Bucci
10 Office Action Mailing Date : 06 JAN 2009
Response Due Date : 09 FEB 2009

15

Renewed Petition under 37 CFR §1.137(a) and (a)

Mail Stop: PETITIONS
Commissioner for Patents
20 P.O. Box 1450
Alexandria, VA 22313-1450

TO THE COMMISSIONER FOR PATENTS:

In reply to the dismissed petition mailed on 06 JAN 2009, the Applicant(s)
25 respectfully request the entry and consideration of the attached documents (if any) as a
collective statement that the entire delay in filing the required reply from the due date for
the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(a) and (b)
was unavoidable and, indeed, unintentional.

EXHIBIT EE

REQUEST FOR RECONSIDERATION OF DISMISSED PETITION:

The following comments direct the Office of Petitions to the exact location of text found within all of the previously submitted petitions and renewed petitions (including their respective attachments) for answers to the comments and questions of the Dismissal

5 Decision of 6 JAN 2009. In order to obtain a better understanding of the circumstances involved and the context within which those texts appear, the Petitioner very respectfully requests the Office of Petitions to revisit, and carefully reread the following previously submitted petitions and renewed petitions, including their respective attachments.

Complete, detailed, and thorough answers to all questions and comments of the Dismissal

10 Decision of 6 JAN 2009 is found in the following submitted documents:

- The "SUPPLEMENTAL STATEMENT ESTABLISHING UNINTENTIONAL DELAY UNDER 37 CFR 1.137(b)" filed 6 JUN 2006, including all attachments;
- 15 • The "Renewed Petition under 37 CFR 1.137(b)" filed 23 JULY 2007, including all attachments; and
- The "Additional Sheets Containing Statement Establishing Unavoidable Delay under 37 CFR 1.137(a)" filed 22 OCT 2008, including all attachments.

20 The following comments are further clarifications related to the comments and questions of the Dismissal Decision of 6 JAN 2009:

The Office of Petitions states on page 2, line 3:

25 "Petitioner takes the position that the failure to timely reply to the final Office action of November 18, 2003 was due to the actions or inactions of Dr. Lindsey."

It is respectfully submitted that the Petitioner has always taken the position that the failure of timely reply to the final Office action of November 18, 2003 was due to inappropriate, unethical, fraudulent, deceitful, and unlawful conduct of Dr. Lindsey.

5 The Office of Petition further states on page 2, lines 12 to 14:

"The Petition implies that Beech and Illare never communicated directly with each other from the time of August 15, 2003 Employment Agreement until after the abandonment of the Application."

10 It is respectfully submitted that the Petitioner did not merely imply that Mr. Beech and Mr. Illare never communicated directly with each other from the time of August 15, 2003 Employment Agreement until after the abandonment of the Application. The Petitioner has always explicitly expressed that no communications were made between Mr. Beech and Mr. Illare, direct or otherwise from the time of August 15, 2003
15 Employment Agreement until after the abandonment of the Application. The evidence from Mr. Beech himself (submitted with the previous petitions and renewed petitions) plainly shows that Mr. Beech and Mr. Illare never communicated. Mr. Illare and Mr. Beech did not know each other.

20 The Office of Petitions on page 2, lines 20-22 state:

"The application record shows that Beech filed timely response to the first Office action (12/19/02) and the second Office action (5/30/03). Did Beech confer with and get instructions from Lindsey and/or Illare before filing these responses?"

25 Mr. Beech conferred with and received instructions from Dr. Lindsey for the first Office action. For the reply to the second office action, Mr. Beech had no choice but to confer and receive instructions from Dr. Lindsey because Mr. Beech was not aware of Mr. Illare or his responsibilities at the time of filing of reply to the second Office action. As has been indicated numerous times in all the petitions and renewed petitions filed, Dr.

Lindsey kept Mr. Beech isolated from all parties, including Dr. Margaryan. Again, the evidence from Mr. Beech himself (submitted with the previous petitions and renewed petitions) plainly shows that Mr. Beech communicated with Dr. Lindsey, and was not at all aware that Mr. Illare was fully responsible for all final decisions regarding any patent matter.

The Office of Petitions on page 2, lines 23-24 states:

"Was Illare aware of the instant patent application at the time of Employment Agreement of August 15, 2003?"

Mr. Illare was aware of the existence of a fluorophosphates application at the time of Employment Agreement of August 15, 2003. In fact, as indicated in all of the previously submitted petitions and renewed petitions, Mr. Illare was aware of the existence of a fluorophosphates application even before the Employment Agreement of August 15, 2003. However, again, as indicated in all of the previously submitted petitions and renewed petitions, Mr. Illare did not know any specifics with respect to the instant patent application to identify it to take appropriate action. Despite numerous requests by Mr. Illare for information regarding the instant application, Dr. Lindsey never provided Mr. Illare any information, and always falsely assured Mr. Illare that the patent was on track to be issued.

The Office of Petitions on page 2, lines 27 to 28 states:

"At the time Beech received the final Office action, was he aware that Illare was responsible for all final decisions regarding any patent matter?"

The evidence from Mr. Beech himself (submitted with the previous petitions and renewed petitions) plainly shows that Mr. Beech was not at all aware that Mr. Illare was fully responsible for all final decisions regarding any patent matter. In fact, as was indicated in all of the previously submitted petitions and renewed petitions Mr. Beech did

not know Mr. Illare. That is one reason why Mr. Beech forwarded all communications to Dr. Lindsey in California, and nothing was mailed to the official company address in Florida. Again, due to Dr. Lindsey's embezzlement of funds from Nano Teknologies, Dr. Lindsey kept all information, including contact information between Mr. Illare and Mr.

5 Beech hidden.

The Office of Petitions on page 2, lines 28-29 states:

10 "If he [Mr. Beech] was not [aware that Mr. Illare was responsible for all final decisions], when did he [Mr. Beech] become aware of Illare's responsibility in regard to patent matters?

It was not until the beginning of 2006 that Mr. Beech became ware of Mr. Illare, his position, and responsibilities. For further evidence, please see the following citations from the previously submitted petitions and renewed petitions:

15

- Supplemental statement establishing unintentional delay under 37 CFR 1.137(b) filed 6 JUN 2006, page 4, lines 23 to 34.
 - The petition filed under unavoidable provisions of 37 CFR 1.137(a) filed 22 OCT 2008, page 22, lines 4, to page 23, line 15, which establishes the date of initial
- 20 contact between Mr. Beech and Mr. Illare based on actual dates of emails exchanged between Dr. Margaryan, Mr. Ashot Margaryan, and Mr. Illare.

The Office of Petitions on page 2, lines 32-33 states:

25 "The second paragraph on page 10 of the instant petition states that Illare made numerous requests to Lindsey for information regarding the instant application. Specifically, when were these requests made?"

Oral requests were made numerous times by telephone conversations between Dr. Lindsey and Mr. Illare. Regrettably, Dr. Lindsey has passed away, and therefore, cannot

be subpoenaed to provide a written statement affirming the oral requests made by Mr. Illare. As for evidence of written communications in relations to the requests from Mr. Illare, please see the following citations from the previously submitted petitions and renewed petitions:

5

- The supplemental statement establishing unintentional delay under 37 CFR 1.137(b) filed on 6 JUN 2006, page 2, line 42 to page 3, line 9.
- The supplemental statement establishing unintentional delay under 37 CFR 1.137(b) filed on 6 JUN 2006, page 4, lines 11 to 12.
- 10 • The renewed petition under 37 CFR 1.137(b) filed on 23 JULY 2007, page 5, lines 24 to page 16, line 19.
- The renewed petition under 37 CFR 1.137(b) filed on 23 JULY 2007, page 11, lines 14 to page 16, line 11.
- 15 • Additional sheets containing statement establishing unavoidable delay under 37 CFR 1.137(b) filed on 22 OCT 2008, page 10, lines 10 to 17, page 17, lines 13 to page 19, line 24.

The Office of Petitions on page 2, lines 34-35 states:

20 "Did Illare make any attempt to contact Beech when it was clear that Lindsey was not responding to his requests?"

25 The short answer is yes. However, Mr. Illare did not know Mr. Beech to contact him. Again, Dr. Lindsey never provided to Mr. Illare any information regarding Mr. Beech. Further, as evidenced from Mr. Beech himself (submitted with the previous petitions and renewed petitions), Mr. Beech did not know Mr. Illare. Of course, after meeting with Dr. Margaryan, Mr. Illare did contact Mr. Beech several times. However, it was not until late 2005, early 2006 that Mr. Beech finally responded after Mr. Illare, his attorney, and Dr. Margaryan all demanded that Mr. Beech immediately forward all information regarding the patent application to Mr. Illare or face legal action.

Please see the following citations from the previously submitted petitions and renewed petitions in relations to Mr. Illare's contact with Mr. Beech:

- 5
- The supplemental statement establishing unintentional delay under 37 CFR 1.137(b) filed on 6 JUN 2006, page 4, line 23 to line 34
 - The petition filed under unavoidable provisions of 37 CFR 1.137(a) filed 22 OCT 2008, page 22, lines 4 to page 23, line 15.

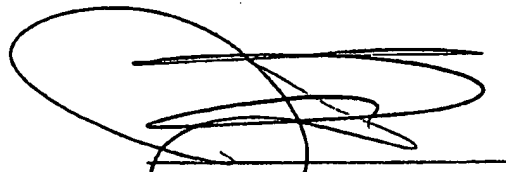
10 The Petitioner respectfully requests the entry and consideration of this renewed petition under 37 CFR 1.137(a) and (b), including all attached documents (if any) as a collective statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(a) and (b) was unavoidable, and indeed, unintentional, and respectfully solicit the granting of the

15 petition pursuant to 37 C.F.R. §1.137(a) and (b).

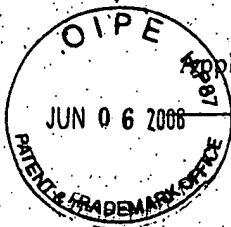
20

February 9, 2009

Date



JACK J. ILLARE, III



Application No.: 10/054,328

Fluorophosphate glass and method for making thereof

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/054,328
5 Filing Date : 20 JAN 2002
First Named Inventor : Alfred A. MARGARYAN
Assignee : NANO TEKNOLOGIES, LLC
10 Art unit : 1755
Examiner : Elizabeth A. BOLDEN
15 Office Action Mailing Date : 01 JUL 2004

RECEIVED
JUN 12 2006
OFFICE OF PETITIONS

Title: **FLUOROPHOSPHATE GLASS AND METHOD FOR MAKING THEREOF**

SUPPLEMENTAL STATEMENT ESTABLISHING UNINTENTIONAL DELAY

UNDER 37 CFR §1.137(b)

Attention: Office of Petitions
Mail Stop: Petition
25 Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TO THE COMMISSIONER FOR PATENTS:

30 The following is a supplemental statement establishing unintentional delay under 37 CFR §1.137(b). This supplemental statement is for an adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR §1.137(b) was unintentional.

35 My name is Jack Illare, I was a passive investor with an investment of one million dollars into NANO Teknologies, LLC, the assignee of the above referenced application, to fund the company and to pay for the work done by my colleagues as described below.

40 Today, I am the only investor and only director of NANO Teknologies, LLC. I need your assistance in correcting acts of gross negligence, fraud, and embezzlement that occurred due to the mismanagement and carelessness of then sole director and president of NANO Teknologies, LLC, Dr. Lonnie Lindsey.

Dr. Lindsey's responsibilities included the management of the company's day-to-day activities and the protection and maintenance of the company's assets including the company intellectual property.

NANO Teknologies, LLC hired a well-known material scientist, Dr. Alfred Margaryan on November 1, 2000 to conduct research and development of next generation optical materials. While employed at NANO Teknologies, LLC, Dr. Margaryan became the inventor for and synthesized the fluorophosphate glass system that is the subject of the patent application 10/054,328, which was filed on January 21, 2002.

On May 11, 2001 Dr. Margaryan signed an addendum to employment agreement and employment invention agreement with NANO Teknologies, LLC with an effective date of October 2, 2000. A copy of this employment agreement is attached herein for your information, as exhibit "A."

In accordance with his employment agreement, Dr. Margaryan had agreed to execute certain assignments transferring to NANO Teknologies, LLC all of his rights, title, and interest in inventions.

Regrettably, after the development of the invention, Dr. Lindsey fired Dr. Margaryan from NANO Teknologies, LLC on April 28, 2002. Please see attached copy of the Email that Dr. Lindsey forwarded to Dr. Margaryan regarding a layoff notice, as exhibit "B."

However, due to the above mentioned signed employment agreement, Dr. Margaryan was later compelled to sign an assignment agreement with NANO Teknologies, LLC on June 23, 2003, which released him from all his rights, title, and interest with respect to patent application 10/054,328. The assignment agreement signed by Dr. Margaryan was recorded with the USPTO on July 3, 2003, and was accorded the reel number: 014237 and frame number: 0428. A copy of the assignment is attached herein for your records, as exhibit "C."

Accordingly, actions, inactions or intension of Dr. Margaryan, who is the applicant and the inventor for the application 10/054,328, are irrelevant under 37 CFR 1.137(b).

The only party relevant under 37 CFR 1.137(b) is Dr. Lonnie Lindsey, who committed fraud, embezzled well over \$400,000.00 invested in the company, falsified, concealed, covered daily operations of the company, and did not continue the prosecution of intellectual property matters of NANO Teknologies, LLC.

The following are relevant events to the best of my knowledge that led to unintentional abandonment of the applications 10/054,328 for which we are requesting a revival under 37 CFR 1.137(b).

For all intellectual property proceedings, Dr. Lindsey always falsely assured me that all intellectual property matters with respect to patent application 10/054,328 and, in fact, any intellectual property matter related to NANO Teknologies, LLC, was moving forward with no problems. That is, in response to the numerous inquiries about the status of all intellectual property matters by me, Dr. Lindsey made falsified statements, concealed and covered all patent matters from me, and as is obvious by now, grossly mismanaged all intellectual property matters

with regards to their status. In other words, Dr. Lindsey abused my trust, and lied by falsely assuring me that all intellectual property matters before the USPTO were proceeding without problems, and that we should have a patent in the near future.

5 Of course, I did request that Dr. Lindsey to provide me with all of company paperwork. Regrettably, he maintained (conveniently) that he had misplaced the corporate minutes and books (further explained below). However, regardless of the company paperwork (or lack thereof), he always falsely maintained that the status of the patents were up to date.

10 Patent attorney Dennis W. Beech was Nano Teknologies' representative before the USPTO for patent application 10/054,328. He forwarded all correspondence for all patent matters to both Dr. Lindsey and Dr. Margaryan because as the inventor of the glass, Dr. Margaryan was also notified of the requests from the USPTO. It should be noted that to the best of my knowledge, attorney
15 Dennis W. Beech was kept in the dark and was not aware of the fact that Dr. Margaryan was fired by Dr. Lindsey. It should also be noted that Dr. Lindsey never gave me any information regarding attorney Dennis W. Beech. He just said he had an attorney working on the case, and that I should not worry.

20 Regrettably, unbeknownst to me, Dr. Lindsey did not respond to any correspondence from attorney Dennis W. Beech regarding Office Actions or any related patent matter from the USPTO. However, regardless of the fact that Dr. Margaryan was no longer an employee of NANO Teknologies, LLC, he kindly made several attempts to contact Dr. Lindsey to offer him his help regarding the patent application 10/054,328. Nonetheless, Dr. Lindsey failed to respond to both attorney Dennis W. Beech and Dr. Margaryan.

25 It should be noted that at that time, I had never met, nor was I ever introduced to Dr. Margaryan, nor attorney Dennis W. Beech. I was a mere passive investor. Accordingly, Dr. Margaryan did not know about me or the fact that I funded the company. That is one reason why despite his knowledge of the patent proceedings he never contacted and share with me what was occurring.
30 Of course, by then Dr. Margaryan was not even an employee of NANO Teknologies, LLC. It is now apparent that Dr. Lindsey purposefully kept Dr. Margaryan, attorney Dennis W. Beech, and I separate for the reasons below.

35 As stated above, I invested one million dollars into NANO Teknologies, LLC to fund the company. On or about January 24, 2002, Dr. Lindsey called and requested for more funds from me. His request caused me to realize and look into how much of the one million dollars of investment was actually spent. I learned that there was an accounting discrepancy of about \$400,000.00. I learned that \$400,000.00 of the one million dollars invested was missing. I obviously confronted Dr. Lindsey regarding this matter. He told me the funds were set aside for
40 chemicals and equipment. Of course, it was not until more than a year or so ago that I had found out that the missing \$400,000 was taken out and used to fund other companies in which Dr. Lindsey had an interest. Dr. Lindsey admitted that fact to me and a colleague that this was the case. Hence, he clearly embezzled the funds appropriated for the NANO Teknologies, LLC. This was the reason why Dr. Margaryan, Dennis W. Beech, and I were kept apart, and that Dr.
45 Lindsey kept everyone isolated from each other and never bothered to continue work with attorney Dennis W. Beech. In reality, it is my opinion that he was too busy trying to cover up the missing funds to bother with anything else, and was busy with his other companies.

Accordingly, by July 1, 2004 the patent application 10/054,328 for NANO Teknologies, LLC became abandoned due to lack of a reply to the Office Actions from the USPTO, which was clearly the fault of Dr. Lindsey for not responding to the numerous requests from Dr. Margaryan and attorney Dennis W. Beech (for the reasons mentioned above):

I asked for Dr. Lindsey's resignation in June of 2004 because of the missing funds mentioned above. However, at that time, I was still not aware of the fact that the application 10/054,328 was abandoned, and had no information with respect to the application and, in particular, I was not aware of the fact that the U.S. Patent Examiner Elizabeth A. Bolden had allowed one of the claims in that case.

I requested the contact information of Dr. Margaryan from Dr. Lindsey. Obviously, Dr. Lindsey was completely uncooperative, and disappeared from existence. It was only through partial company documents that I found about Dr. Margaryan, and tried to establish contact with him (who was fired by Dr. Lindsey on April 28, 2002). I believe Dr. Lindsey fled the United States in fear of getting sued or arrested. I later found out that Dr. Lindsey left the country, taking most of the corporate information and corporate records with him, making it impossible to obtain any further information regarding any matter, including patent application 10/054,328. In February of 2005, I was notified that due to health reasons Dr. Lindsey had passed away. All these facts together made it even more difficult and time consuming for me to gather all the necessary data and contact information to proceed with the prosecution of the patent application 10/054,328.

It was not until about September of 2004 that for the first time I established contact with Dr. Margaryan, who provided me with contact information about attorney Dennis W. Beech. I contacted (via telephone) attorney Dennis W. Beech (numerous times) both directly and through Dr. Margaryan, but he never responded. It is now apparent to me that it may have been due to confidential nature of patent law. As I indicated above, attorney Dennis W. Beech did know me, and only knew Dr. Lindsey and Dr. Margaryan in relation to the patent application 10/054,328.

It was not until several months ago that through my own personally attorney, and Dr. Margaryan's permission, that I made a formal request of attorney Dennis W. Beech to provide me with all information about the patent application 10/054,328. To my disappointment, I found out that the patent application 10/054,328 had been abandoned, despite the fact that claim 11 of that application was allowed.

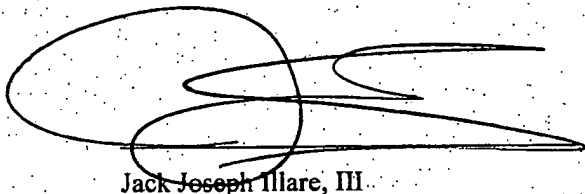
We now have a new representative, and have instructed him to proceed with this petition under 37 CFR 1.137(b).

You are welcome to contact me at 1-772-538-1288 if you have any further questions or comments.

The undersigned hereby declare that all statements made herein of the party's own knowledge are true, all statements made herein on information and belief are believed to be true, and all statements made herein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the

penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom.

5



Jack Joseph Illare, III

June 2, 2006

Date

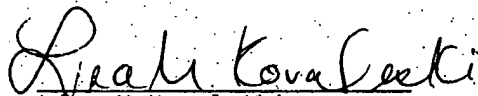
RECEIVED

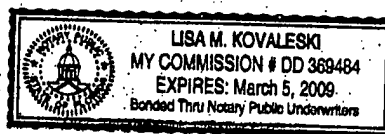
JUN 12 2006

OFFICE OF PETITIONS

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 2nd day of June, 2006 by Jack J. Illare, III as managing member of Nano Teknologies, LLC, a State of Florida limited liability company, who is personally known to me or and did take oath.


Lisa M. Kovaleski





May 06 06 02:04p

Ashot Margaryan

BIB 2415403

P..

EXHIBIT-A

**ADDENDUM to
EMPLOYMENT AGREEMENT
and
EMPLOYMENT INVENTION AGREEMENTS**

RECEIVED**JUN 12 2006****OFFICE OF PETITIONS**

This Addendum to Employment Agreement and Employment Invention Agreement (the "Addendum") is made and entered into as of the 11th day of May, 2001 (the "Effective Date") by and between EXTREME TEKNOLOGIES ("Extreme"), a California entity and NANO TEKNOLOGIES, LLC ("Nano"), a Florida limited liability company, on the one hand, and ALFRED MARGARYAN ("Margaryan") on the other hand.

1. Extreme and Margaryan entered into an Employment Agreement and concurrent Employee Invention Agreement with each agreement effective as of October 2, 2000.
2. Nano is a subsidiary of Extreme which was organized and is operating under the laws of the State of Florida.
3. As part of his responsibilities under the above-referenced Employment Agreement and Employee Invention Agreement, Margaryan has agreed to execute certain assignments transferring to Nano all of his right, title and interest in two (2) patent applications, with the first an application for a "Laser Glass-Fiber Amplifier" and the second for a "Flourophosphate Laser Glass" in the forms attached as Exhibits "A" and "B." It has been agreed by all parties that the two patent applications represent "Inventions" within the meaning of Paragraph 2 of the Employee Invention Agreement.
4. In executing this Addendum Nano hereby assumes all of the obligations of Extreme to Margaryan with regard to the two (2) assigned patent applications pursuant to the Employment Agreement and Employment Invention Agreement.
5. All of the remaining provisions of the Employment Agreement and Employment Invention Agreement referenced above shall remain in full force and effect, including, without prejudice to the generality, Paragraph 2 of the Employee Invention Agreement which provides for certain consideration based on revenues to be paid to Margaryan for each patent assignment.

IN WITNESS WHEREOF, the undersigned have considered this Agreement to be duly executed as of the date and year first above written.

EXTREME TEKNOLOGIES
"Extreme"

NANO TEKNOLOGIES, LLC
"Nano"

ALFRED MARGARYAN
"Margaryan"

EXHIBIT - B

Hotmail® nanotek3@hotmail.com

Inbox | [Previous Page](#)

From: "Ashot Margaryan" <nanotek3@hotmail.com>
To: nanotek3@hotmail.com
Subject: Fwd: Layoff Notice
Date: Sun, 28 Apr 2002 21:20:03 -0700

RECEIVED

JUN 1 2 2006

OFFICE OF PETITIONS

From: lonnie.lindsey@nanotek.com
To: nanotek3@hotmail.com
CC: randy@cw.com, lonnie.lindsey@nanotek.com, phil@cw.com, jack@cw.com
(Jack), jack@cw.com
Subject: Layoff Notice
Date: Sun, 28 Apr 2002 12:20:37 EDT

TO: Dr. Alfred Margaryan
Ashot Margaryan
FROM: Lonnie Lindsey, President Extreme Teknologies, Inc.
Date: April 28, 2002

This will serve as your official notification of temporary suspension of employment with Extreme Teknologies, Inc., effective immediately.

This layoff is a result of the depletion of funds for your research project through Nanoteknologies, Inc. You each have performed your duties in an exemplary manner and exceeded our expectations of your performance. I join you in the deep disappointment on holding off on your most important research effort, but economic conditions since 9/11/01 and the availability of investment funds has left us no alternatives. We will continue to pursue funding sources and hope to renew your research efforts once we have secured adequate financing.

You both will be paid your normal salary through April 30, 2002 under this schedule:

Due to lack of funds at this time, here is the planned schedule for paychecks.

April 5, 2002 pay check will be available May 1, 2002
April 19, 2002 pay check will be available by May 15, 2002
Final paycheck will be available before May 30, 2002.

You may retain company equipment and supplies if you wish until such time as we resume research efforts or upon notice by me to return them to the office. You may retain the company credit card, but do not charge any further expenses.

Your health insurance will expire April 30, 2002. If you wish to continue your health insurance benefit, you may contact our insurance administrator to set up payment continuance.

We anticipate this layoff to continue for at least 120 days and perhaps permanently. If we can secure funding, your employment will be reinstated.

It has been an honor to work with you. You both can be proud as I am of the job you did.

High regards,

Lonnie Lindsey
President,
Extreme Teknologies, Inc
Nanoteknologies, Inc.

EXHIBIT-C

ASSIGNMENT FOR APPLICATION FOR UNITED STATES PATENT

Whereas:

INVENTOR: ALFRED A. MARGARYAN
ADDRESS: P.O. Box 1934, Glendale, CA 91209
COUNTRY: USA

RECEIVED

JUN 12 2006

OFFICE OF PETITIONS

(hereinafter referred to as ASSIGNOR), has invented and own a certain invention entitled:

FLUOROPHOSPHATE GLASS AND METHOD FOR MAKING THEREOF

for which application for Letters Patent of the United States has been executed and filed with the United States Patent Office for which U.S. Patent Application No. 10/054,328 is currently pending,

Whereas:

NANO TEKNOLOGIES, LLC, as a limited liability company authorized to do business in the State of Florida, United States of America,

(hereinafter referred to as ASSIGNEE), is desirous of acquiring the entire interest in, to an under said invention and in, to and under Letters Patent or similar legal protection to be obtained therefore in the United States and in any and all foreign countries.

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN:

Be it known that in consideration of the payment by ASSIGNEE to ASSIGNOR of the sum of one dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration, ASSIGNOR hereby sells, assigns and transfers to ASSIGNEE the full and exclusive right, title and interest to said invention in the United States and its territorial possessions and in all foreign countries and to all Letters Patent or similar legal protection in the United States and its territorial possessions and in any and all foreign countries to be obtained for said invention by said application or any continuation, division, renewal, substitute or reissue thereof or any legal equivalent thereof in a foreign country for the full term or terms for which the same may be granted.

ASSIGNOR hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this

assignment and sale;

ASSIGNOR further covenants that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said application, said invention and said Letters Patent and legal equivalents in foreign countries as may be known and accessible to ASSIGNOR and will testify as to the same in any interference or litigation related thereto and will promptly execute and deliver to ASSIGNEE or its legal representative any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof in any foreign country which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS WHEREOF, I have hereunto set hand and seal this

Date: 6.23.03

Alfred Margaryan

State of California

County of LOS ANGELES

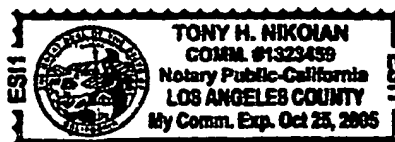
On JUNE 23, 2003, before me,

TONY H. NIKOLIAN, personally appeared ALFRED MARGARYAN personally known to me - or ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

SUBSCRIBED AND SWORN TO BEFORE ME

WITNESS my hand and official seal.

Signature of Notary: Tony H. Nikolian



15



THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/054,328
5 Filing Date : 20 JAN 2002
First Named Inventor : Alfred A. MARGARYAN
Petition Examiner : Brian HEARN
10 Office Action Mailing Date : 25 APR 2007
Response Due Date : 25 JUN 2007

RECEIVED

JUL 26 2007

OFFICE OF PETITIONS

15

Renewed Petition under 37 CFR §1.137(b)

Mail Stop: **PETITIONS**
Commissioner for Patents
20 P.O. Box 1450
Alexandria, VA 22313-1450

TO THE COMMISSIONER FOR PATENTS:

25 In reply to the dismissed petition mailed on 25 APR 2007, for which the period of
response has been extended for one month to 25 JULY 2007, the Applicant(s)
respectfully request the entry and consideration of the attached documents as a collective
statement that the entire delay in filing the required reply from the due date for the reply
until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional.

30

EXHIBIT AG

POWER OF ATTORNEY / ASSIGNEE OF RECORD:

The Office of Petitions stated that the power of attorney filed June 6, 2006 to prosecute patent application 10/054,328 on behalf of Nano Teknologies has not been
5 accepted. The Office of Petitions further stated that the records show that this application has been assigned to another company and Nano Teknologies is no longer the current assignee. The Office of Petitions also stated that the statement under 37 C.F.R. §3.73(b) filed concurrently with the power of attorney fails to establish ownership in the application as Nano Teknoloiges is no longer the current assignee.

10

Patent Agent Peter Ganjian was and continues to be the attorney of record for case 10/054,328 on behalf of AFO, Inc., which is the current assignee. The Petition statement filed under 37 C.F.R. §1.137(b) was filed for patent application 10/054,328 on behalf of AFO, Inc. by the attorney of record Patent Agent Peter Ganjian. Accordingly, it is
15 respectfully requested that all future correspondence for case 10/054,328 be directed to the attorney of record Patent Agent Peter Ganjian.

REQUEST FOR RECONSIDERATION OF DISMISSED PETITION:

In dismissing the petition, the Office of Petitions states:

20

"Petitioner has not shown to the satisfaction of the Director that the delay was unintentional under 37 C.F.R. §1.137(b). The statement of unintentional delay was made by attorney Peter Ganjian, who was not in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue."

25

The Office of Petitions is correct in stating that Patent Agent Peter Ganjian was not in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. However, Patent Agent Peter Ganjian merely executed and filed the Petition Form under 37 C.F.R. §1.137(b) and the statement of unintentional delay (as part of the Petition Form) on behalf of the Petitioner, as Petitioner's representative. The

actual statement of unintentional delay printed on the Petition Form is that of the
Petitioner, only. Accordingly, it is the Petitioner (the Applicant (Dr. Margaryan) and the
new assignee (AFO, Inc.) with Mr. Illare as the Executive), with firsthand or direct
knowledge of the facts and circumstances of the delay at issue that has made the
5 statement of unintentional delay printed on the Petition Form (through Petitioner's
representative who merely executed the Petition Form filed under 37 C.F.R. §1.137(b) on
behalf of the Petitioner). Of course, if required by the Office, the Petitioner will gladly
provide a new Petition Form PTO/SB/64 under 37 CFR 1.137(b) that is also executed
(signed and dated) by the Petitioner rather than the attorney of record, Patent Agent Peter
10 Ganjian.

The Office of Petitions further states:

“Where the applicant permits a third party (whether a partial assignee, licensee, or
other party) to control the prosecution of an application, the third party's decision
15 whether or not to file a reply to avoid abandonment is binding on the applicant.”

Petitioner hereby respectfully submits a copy of an EMPLOYMENT
AGREEMENT as evidence that Mr. Jack J. Illare did not permit a third party to control
the prosecution of the application. Further, Mr. Illare has never entered into an
20 agreement with a third party for the third party to take control of the prosecution of an
application.

The EMPLOYMENT AGREEMENT states under paragraph 1, “Term of
Employment” that Mr. Jack J. Illare is the Executive as Chairman of the Board of
25 Directors of Nano Teknologies, the then assignee of the patent application 10/054,328.
The EMPLOYMENT AGREEMENT states under paragraph 2, “Title and Duties” of the
Executive (Chairman of the Board of Directors), on lines 5 to 8:

"The Executive shall be responsible for day to day duties as well as all strategic planning with regards to the future growth of the company and shall have such other duties as to direct the [Board of Directors], in their strategic direction."

5 As further evidence of responsibilities of the Executive of the Nano Teknologies, the EMPLOYMENT AGREEMENT under paragraph 10 "Proprietary Rights" starting on page 7, lines 5 plus states:

10 "The Executive shall ...assist the Company for its own benefit in obtaining and enforcing patents ... upon request, the Executive shall execute all applications, assignments, instruments and papers and perform all acts (such as the giving of testimony in interference proceedings and infringement suits or other litigation) necessary or desired by the Company to enable the Company and its successors, assigns and nominees to secure and enjoy the full benefits and advantages of such Inventions."

15 As evident from the EMPLOYMENT AGREEMENT, the record is clear that at least from the signing date of the EMPLOYMENT AGREEMENT on August 15, 2003 and onwards, it was Mr. Illare that was fully in charge of all company matters (including patents). Dr. Lindsey executed this agreement. The execution date of August 15, 2003
20 of the EMPLOYMENT AGREEMENT is at least four months before the Office Action mailing date of November 18, 2003, and more than a year before the notice of abandonment, which was mailed on July 1, 2004 for case 10/054,328.

25 As even further evidence, Petitioner hereby respectfully submits a copy of the MINUTES OF ANNUAL MEETING OF MEMBERS of the Nano Teknologies, LLC as evidence that Mr. Jack J. Illare was the Chairman and the Managing Director of Nano Teknologies, LLC.

Accordingly, Mr. Illare was always in control of the prosecution of the patent application. No third parties were involved.

Besides Mr. Illare, the other party involved in (but not in control of) the
5 prosecution of case 10/054,328 was Patent Attorney Dennis W. Beech, who functioned
under the direction of the Applicant (Dr. Margaryan) and the then assignee (Nano
Teknologies) with Mr. Illare as the Executive. Mr. Beech recently provided a letter
(dated June 5, 2007) to the Petitioner stating all the facts within his personal knowledge
10 regarding the case 10/054,328 and its prosecution history (at least in relation to the final
rejection and the unintentional abandonment of the case). A copy of this letter and all
documents mentioned therein are attached, and are incorporated herein by reference. As
evident from the letter and all the documents provided by Mr. Beech, Mr. Beech was not
in control of the prosecution of this case and functioned strictly under the direction and
instruction of Nano Teknologies.

15

As to Dr. Lindsey, Mr. Illare considered Dr. Lindsey's day-to-day activities with
respect to patent matters as a "messenger," a "go-between," or a "liaison" between Mr.
Beech and Mr. Illare. Dr. Lindsey was made the liaison to provide information to Mr.
Illare regarding patent procedures because Dr. Lindsey was very knowledgeable about
20 patents and patent proceedings. However, Mr. Illare and not Dr. Lindsey always made
the final decision as to any patent matter as evident under the terms of the
EMPLOYMENT AGREEMENT, which was signed by Dr. Lindsey himself.

The Petitioner hereby further respectfully submits a copy of two emails from Dr.
25 Lindsey to Mr. Illare, as evidence that Mr. Jack J. Illare did not permit a third party to
control the prosecution of the application. Both correspondences are attached, and are
herein incorporated by reference. In the email dated September 14, 2003 (prior to the
Final Rejection of November 18, 2003), Dr. Lindsey informs about the resignation of two
employees and states:

"Just let me know what you would like me to do now. We will get it done."

As the tone and the thrust of the email of September 14, 2003 from Dr. Lindsey to Mr. Illare indicates, it was Mr. Illare that was in charge.

5

In that same correspondence, Dr. Lindsey further assures Mr. Illare that:

"Our patents are in order as you requested...I am standing by"

Please note that Mr. Illare as the Chairman and Managing Director of Nano
10 Teknologies constantly requested updated information with respect to the status of the
pending patent application and hence, the reason Dr. Lindsey states that "Our patents are
in order as you requested..." Dr. Lindsey further stated "...Please remember that this
process takes time and I will keep you informed as to the progress of the patents as we
receive word..." Clearly, as a subordinate worker, Dr. Lindsey was supposed to provide
15 report on the progress of the patents as he received word. As further indicated, Dr.
Lindsey awaited further instructions from Mr. Illare by stating that he was "standing by"
for further instructions from Mr. Illare regarding all patent matters and any other issue
related to Nano Teknologies.

20 It should be clear from the EMPLOYMENT AGREEMENT and the attached
correspondences from Mr. Beech and Dr. Lindsey that only Mr. Illare was the responsible
party for handling all patent matters. No third parties were involved.

The Office of Petitions further states:

25 "Where the applicant deliberately permits an application to become abandoned
(e.g., due to conclusion that the claims are unpatentable, that a rejection in an
Office action cannot be overcome, or that the invention lacks sufficient
commercial value to justify continued prosecution), the abandonment of such
application is considered to be deliberately chosen course of action, and the

resulting delay cannot be considered as "unintentional" within the meaning of 37 C.F.R. §1.137(b)....An intentional course of action is not rendered as unintentional when, upon reconsideration, the applicant changes his or her mind as to the course of action that should have been taken..."

5

It is respectfully submitted that obviously the Petitioner did not deliberately permit the patent application 10/054,328 to become abandoned. The applicant (Dr. Margaryan) and the then assignee (Nano Teknologies) with Mr. Illare as the Executive did not intend to abandon the patent application 10/054,328. In fact, this is particularly true in light of the fact that the U.S. Patent Examiner had indicated allowable subject matter in the patent application 10/054,328. There was absolutely no reason for or an intention of abandonment.

As has been stated above, Mr. Beech recently provided a letter (dated June 5, 2007) to the Petitioner stating all the facts within his personal knowledge regarding the case 10/054,328 and its prosecution history prior to and including the unintentional abandonment of the case. As evident from the letter and all the documents provided by Mr. Beech, Mr. Beech as the other party involved in the prosecution of this case had absolutely no intention of abandoning this application.

20

As is clear from Mr. Beech's letter of June 5, 2007 and all the other documentations, Mr. Beech notified Dr. Lindsey about any Office Action or correspondence from the USPTO. In particular, Mr. Beech forwarded the Final Rejection from the USPTO by an enclosed letter on December 16, 2003, with a notice that a response was due by February 18, 2004. As stated therein the letter of June 5, 2007, when no instructions was received from the Applicant (Dr. Margaryan) and the then assignee (Nano Teknologies) with Mr. Illare as the Executive and through Dr. Lindsey acting as the liaison, a second letter was forwarded to both the inventor and Dr. Lindsey. Again, when no instructions were received from Nano Teknologies or any payments, a

25

reminder letter was forwarded on March 30, 2004 to both the inventor Dr. Margaryan and the known "representative" of Nano Teknologies. Clearly, Mr. Beech did everything possible in order to save the patent application from becoming abandoned. As is clear from the June 5, 2007 letter from Mr. Beech, every effort was made by this very
5 competent and capable patent attorney to inform his client (Nano Teknologies) about the status of the case 10/054,328 to save the case from abandonment.

Regrettably, at the time of the first letter from Mr. Beech to Nano Teknologies (December 16, 2003), Dr. Margaryan was no longer part of Nano Teknologies. On April
10 28, 2002, Dr. Lindsay fired Dr. Margaryan from NANO Teknologies and therefore, Dr. Margaryan was no longer with the company and had no rights or no authorization to respond to any communications from Mr. Beech on the companies behalf.

Regarding Mr. Illare, as has been described herein and in the previously submitted
15 SUPPLEMENTAL STATEMENT by Mr. Illare, every effort was made to properly file a reply and continue prosecuting the patent application 10/054,328. Mr. Illare, as the Chairman and Managing Director of Nano Teknologies (the then assignee of the current case 10/054,328), exercised all his duties and responsibilities diligently. According to the EMPLOYMENT AGREEMENT under paragraph 10, "Proprietary Rights," Mr. Illare
20 carried out his duties competently to obtain and enforce patent rights for his company. He used Dr. Lindsey's knowledge of patents and patent proceedings by making Dr. Lindsey the liaison (a messenger) between Mr. Beech and himself. Dr. Lindsey with previous patent work experience knew Mr. Beech and used the services of his law firm. Mr. Illare and Mr. Beech did not know each other. Of course, as indicated above, Mr.
25 Illare and not Dr. Lindsey always made the final decision as to any patent matter as evidenced under the terms of the EMPLOYMENT AGREEMENT, which was signed by Dr. Lindsey himself, and the two emails from Dr. Lindsey to Mr. Illare.

Regrettably, without authorization from the Executive Mr. Illare, Dr. Lindsey never informed Mr. Beech about Mr. Illare and Mr. Illare's responsibilities as the only decision maker with respect to all patent matters. This is clear from the continuous correspondences between Mr. Beech and Dr. Lindsey, rather than Mr. Beech and Mr. Illare. Accordingly, Mr. Beech was not at all aware of Mr. Illare's existence or Mr. Illare's capacity as the Chairman and Managing Director with full authority who could authorize continued prosecution of case 10/054,328. As is clear from the letter of June 5, 2007 of Mr. Beech and all related attached documentation, Mr. Beech forwarded all correspondence and letters to Dr. Lindsey, and even to Dr. Margaryan who was no longer part of the company. However, Mr. Beech never mailed any documents to Mr. Illare. In particularly, Mr. Beech never mailed any documents or notices to the following official two mailing addresses of the Nano Teknologies (Please see the EMPLOYMENT AGREEMENT, paragraph 16):

For the Executive:
Jack J. Illare, III
4480 13th Place
Vero Beach, FL 32966

For the Company:
1070 E. Indiantown Rd.
Suite 400
Jupiter FL, 33477.

It is without a question that Mr. Beech would have forwarded copies of any documents to Mr. Illare if Mr. Beech was given the above two addresses and were aware of the fact that Mr. Illare was the only responsible party. After all, unknowingly, Mr. Beech forwarded copies of notices to Dr. Margaryan even though Dr. Margaryan was no longer part of the company, which placed all confidential and proprietary intellectual property matters of Nano Teknologies in jeopardy. Dr. Lindsey lied and never informed Mr. Beech about the official addresses of the company and about the employment status of Dr. Margaryan. Dr. Margaryan should have never been provided with any proprietary

documents regarding the patent application 10/054,328 because he had assigned his right and interest of the patent to Nano Teknologies, and more importantly, he was fired and was no longer part of the company. Dr. Lindsey clearly placed all proprietary information of Nano Teknologies in jeopardy by not informing Mr. Beech about Dr. Margaryan's employment status with Nano technologies, and not providing Mr. Beech with the two official addresses of the company indicated above.

Nonetheless, documents forwarded to Nano Teknologies never reached Mr. Illare because of Dr. Lindsey's fraudulent acts. Dr. Lindsey breached his EMPLOYMENT AGREEMENT with Mr. Illare by providing a false address to Mr. Beech regarding correspondence between Mr. Beech and the Nano Teknologies. Dr. Lindsey falsely provided Mr. Beech with his own address as the "official" address of the company, which resulted in Mr. Beech forwarding correspondence to Dr. Lindsey rather than to Mr. Illare. Further, Dr. Lindsey completely blocked any communications and the knowledge of existence between Mr. Beech, Mr. Illare, and Dr. Margaryan, which was the reason Mr. Beech maintained all communications with the only apparent or perceived "known company representatives of Nano Teknologies, LLC" that he was aware, which according to the correspondences from Mr. Beech, were Dr. Margaryan (who was fired) and Dr. Lindsey (with an incorrect mailing address of Nano Teknologies).

20

Mr. Illare was not aware of any requests or notices for instructions from Mr. Beech as is evident from the notices Mr. Beech forwarded to Dr. Lindsey and even Dr. Margaryan who was fired from his job, but none was forwarded to the official two addresses of Nano Teknologies. As seen from the letters or notices of Mr. Beech, all information from Mr. Beech was forwarded to the following two addresses:

25

Dr. Margaryan:
P.O. box 1934
Glendale, CA 91209

30

Lonnie Lindsey:
16027 Brookhurst Street.

Suite G.
Fountain Valley, CA 92708-1551

Nothing was forwarded to the two official company addresses. Accordingly, as the only
5 responsible party, Mr. Illare was not aware of any instructional requests with respect to
patent matters from Mr. Beech so that Mr. Illare could carry on his duties as the only
responsible party to respond to those requests from Mr. Beech. Clearly, this entire
abandonment was unintentional and occurred because Dr. Lindsey abused, lied, and
falsely assured the Executive and board of directors of Nano Teknologies (Mr. Illare)
10 with respect to all patent matters, and did the same with Mr. Beech. Accordingly, Mr.
Illare and Mr. Beech did everything possible to save the patent application from being
abandoned, but Dr. Lindsey provided them both with false information.

As to Dr. Lindsey himself, the correspondence of September 14, 2003 from Dr.
15 Lindsey to Mr. Illare (attached) informs Mr. Illare that:

“Our patents are in order as you requested....”

Dr. Lindsey stated the above in response to the numerous requests from Mr. Illare
20 about the status of the patent applications. Dr. Lindsey continued within this same email
and stated:

“Our patents are in order as you requested, and we will be ready to get this
company moving forward as soon as they are issued.”

25

Of course, at the time this email was composed (September 14, 2003), the U.S.
Patent Office had mailed out a first rejection of the case 10/054,328, and the case was far
from issuance. Clearly, this fact was not communicated to Mr. Illare. However, what
was further communicated to Mr. Illare in accordance with the email of September 14,
30 2003 was as follows:

"Please remember that this process takes time and I will keep you informed as to the progress of the patents as we receive word."

5 As is apparent by now, no information regarding the progress of patents was communicated with Mr. Illare. Stated otherwise, Dr. Lindsey never even forwarded any of Mr. Beech's letters or notices to Mr. Illare, nor did he himself inform Mr. Illare about the status of the application.

10 As was stated in the SUPPLEMENTAL STATEMENT by Mr. Illare, Dr. Lindsey had embezzled several hundred thousand dollars from the company (of which Mr. Illare had invested \$ 1 million), but Dr. Lindsey did not even pay Mr. Beech for his services, which is the reason Dr. Lindsey never responded to communications from Mr. Beech. In particular, due to the theft of the company funds by Dr. Lindsey, Mr. Beech never
15 received any funds for the payment of U.S. Patent Office fees as stated (on June 5, 2007 letter of Mr. Beech). As a further evidence of the theft, in the email of May 23, 2004 Dr. Lindsey writes to Mr. Illare:

"...I know you would like to get your \$ 1 million back..."

20

Mr. Illare had invested \$ 1 million dollars into Nano Teknologies, but did not wish to withdraw his investment. He believed in the company's products and the related intellectual properties. After all, all of Nano Teknology intellectual properties are now assigned to the new assignee, AFO, Inc., with Mr. Illare as the Chairman and President of
25 the company. Mr. Illare continues to invest his time and money into AFO, Inc to develop and market the company intellectual properties as evidenced from this very petition. Therefore, the only reason Dr. Lindsey writes about the monies invested by Mr. Illare is that Mr. Illare informed Dr. Lindsey about his knowledge of embezzlement of company

funds. All Mr. Illare wished was the return of the embezzled money to be invested back into Nano Teknologies.

Dr. Lindsey continues in the email of May 23, 2004 and states:

5 "...I know you would like to get your \$ 1 million back, and I am going to suggest to you that I move forward with the sale of NanoTek IP rights."

Of course, there were no IP rights for Nano Teknologies (at least with respect to patent application 10/054,328) to sell. The case 10/054,328 had already been Finally
10 Rejected on November 18, 2003 (when Dr. Lindsey composed the email on May 23, 2004), and the shortened statutory period for the Final had already ended on February 18, 2004, with no reply or extensions of time filed. In addition, as stated above, Dr. Lindsey was no longer in contact with Mr. Beech, despite Mr. Beech's best efforts to contact Dr. Lindsey and continue with the prosecution of this case. As further stated by Dr. Lindsey
15 in that email on May 23, 2004 from Dr. Lindsey to Mr. Illare:

"I will continue on with getting the patents issued then marketing them as I discussed last March with you."

20 As is clear, Dr. Lindsey as the liaison between Mr. Illare and Mr. Beech blatantly lied. According to the correspondence from Mr. Beech at the time Dr. Lindsey composed this email, Dr. Lindsey was fully aware of the status of the patent application, but never inform Mr. Illare about it. According to the correspondences between Mr. Beech and Dr. Lindsey (all attached), Dr. Lindsey was fully aware of the following documented facts,
25 but never informed Mr. Illare (as evident from the above passage):

- U.S. patent application received a final rejection on November 18, 2003.
- Statutory time limit for reply to Final rejection of November 18, 2003 ran out on February 18, 2004.

- Only a month and a half remained under 37 CFR 1.136(a) for extensions of time
- No reply was even prepared for filing
- No payment of USPTO fees were provided to Mr. Beech

5 All the above had already occurred and Dr. Lindsey was fully aware of all the facts of the case and never informed Mr. Illare about any of the above. Instead, Dr. Lindsey stated, "I will continue on with getting the patents issued then marketing them as I discussed last March with you." The application 10/054,328 was nowhere near issuance. However, Dr. Lindsey did the opposite, and again falsely assured Mr. Illare
10 that he would "continue on with getting the patents issued." In fact, without any indication of any grant of a patent from the U.S. Patent Office, Dr. Lindsey now assured Mr. Illare about "marketing them as I discussed last March with you."

Clearly, Mr. Illare was not informed and had no idea about the status of the patent
15 application 10/054,328, despite Mr. Illare's relentless requests about it. The only information Mr. Illare had from Dr. Lindsey is that he would continue with getting the patents, which was a false assurance that the company's IP rights were not in jeopardy.

It is clear that Dr. Lindsey abused, lied, and falsely assured the Executive and
20 board of directors of Nano Teknologies (Mr. Illare) with respect to all patent matters, which in turn, caused the unintentional abandonment of the application. Accordingly, in view of Dr. Lindsey's actions, it is respectfully submitted that the abandonment of the application should be viewed as unintentional by the Applicant (Dr. Margaryan) and the then assignee (Nano Teknologies) with Mr. Illare as the Chairman and Managing
25 Director in charge of all patent matters.

As has been stated in the SUPPLEMENTAL STATEMENT and evidenced from the letter of Dr. Lindsey to Mr. Illare, Mr. Illare relentlessly requested information about patent matters from Dr. Lindsey and hence, the reason Dr. Lindsey stated in the letter of

September 14, 2003 that "Our patents are in order as your requested... Please remember that this process takes time and I will keep you informed as to the progress of the patents as we receive word."

5 Further, as was also stated therein the SUPPLEMENTAL STATEMENT submitted with the petition (and the emails from Dr. Lindsey and the letters from Mr. Beech), Dr. Lindsey committed fraud, falsified documents, lied, and did not provide correct contact information to Mr. Illare (or Mr. Beech) so that both Mr. Illare and Mr. Beech could make the correct decision with respect to this patent application. That is, for
10 Mr. Illare to continue prosecution of the case and Mr. Beech to not forward proprietary information to a former employee, Dr. Margaryan, and instead, mail information to the official addresses of the company.

As was stated in the SUPPLEMENTAL STATEMENT (and the attached emails
15 from Dr. Lindsey), Dr. Lindsey always falsely assured Mr. Illare that all patent matters was moving forward with no problems during the entire prosecution of the application. In fact, Mr. Illare was not even informed about the rejection, finally rejection, and the abandonment of the patent application, despite numerous attempts by Mr. Beech informing the company liaison (messenger) Dr. Lindsey about this matter. Again, Dr.
20 Lindsey (as the liaison a messenger or a go-between) lied and never informed Mr. Illare about the status of the patent application (as per the attached emails from Dr. Lindsey to Mr. Illare), just as he did not inform Mr. Beech about the employment status of Dr. Margaryan or the official mailing addresses of Nano Teknologies. As is clearly stated by Dr. Lindsey himself in the second correspondence on May 23, 2004, which was two
25 months prior to the complete abandonment of the patent application with no more extensions of times remaining under 37 CFR 1.136(a):

"I will continue on with getting the patents issued then marketing them as I discussed last March with you."


This statement was made on May 23, 2004 after the Final rejection of November 18, 2003, and the shortened statutory time to reply that ended on February 18, 2004, but before the application was completely abandoned only less than two months later on July 1, 2004. According to this email, Dr. Lindsey never once mentioned the status of the application (which was under Final Rejection), or the eminent abandonment of the case if no extension of time is obtained and no reply is filed. This is despite his full knowledge of the pending status of the case due to all the correspondences he received from Mr. Beech. In fact, Dr. Lindsey insinuated the opposite. According to the email, he was falsely assuring Mr. Illare about marketing the patents that were far from issuance, and were in fact, headed for eminent abandonment.

Clearly, neither Mr. Illare nor Mr. Beech nor the Applicant Dr. Margaryan intended for the patent application to become abandoned and hence, the application was unintentionally abandoned through no fault of any responsible party.

The Applicant(s) respectfully request the entry and consideration of all attached documents as a collective statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional, and respectfully solicit the granting of the petition pursuant to 37 C.F.R. §1.137(b).

23 July 2007
Date

PETER GANJIAN
1-818-248-1465 (Bus.)
1-818-248-7359 (Fax.)



PETER GANJIAN
Registered Patent Agent
Registration No. 43991



EMPLOYMENT AGREEMENT

RECEIVED

JUL 26 2007

OFFICE OF PETITIONS

THIS EMPLOYMENT AGREEMENT, made as of August 15, 2003 by and between

Nano Teknologies, LLC. , a Florida Limited Liability Company (the "Company"), and Jack J. Illare III (the "Executive");

WITNESSETH THAT:

WHEREAS, the Company desires to employ the Executive as an executive officer on the terms hereinafter set forth and the Executive wishes to be so employed;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Executive hereby agree as follows:

1. Term of Employment. The Company agrees to employ the Executive as Chairman of the Board of Directors, responsible for the supervision and direction of the executive officers and the [Board of Directors] of the Company, for a term commencing upon the 15th day of August, 2003 and continuing thereafter until terminated pursuant to Section 6 hereof.

2. Title and Duties. The Executive agrees during the term of this Agreement to devote his skill and efforts to the performance of his duties, faithfully and to the best of his abilities to serve the Company, for the compensation provided for herein. Such duties shall be ordinarily performed by the Executive at his home office in Vero Beach, Florida, until the company provides an alternative office in Vero Beach, Florida or its surrounding areas. The Executive shall be responsible for day to day duties as well as all strategic planning with regards to the future growth of the company and shall have such other duties as to direct the [Board of Directors], in their strategic direction.

3. Compensation. For all services rendered by the Executive to the Company, the Company shall pay to the Executive the compensation and other benefits set forth in this Section 3.

(a) Salary. During the year ended December 31, 2003, the Company shall pay to the Executive a salary at the rate of \$ 200,000.00 per annum (as in effect from time to time, the "Base Salary"). Thereafter, during each of the subsequent years of employment hereunder, the

Company shall pay to the Executive a 5% raise based on the previous year salary amount. Salary payable to the Executive hereunder shall be paid in equal installments, semi-monthly. Salary shall commence upon the raising of at least \$1,000,000.00 by the company after the date of this contract. In the event that Company is merged or acquired, or if an amount of greater than 50% ownership changes hands, Executive shall have the option to stay with new management team under new negotiated terms or leave with an amount equal to two years salary, according to the terms of the contract, being paid to him as severance.

(b) Bonus. In addition to the Base Salary, the Company shall pay to the Executive and the Executive shall be entitled to receive, if due, a bonus for the 12 month period ending in December of any year, which bonus shall be determined and paid as described in the document entitled "Incentive Plan for Nano Teknologies LLC. ", provided that Executive has continued in the employ of the Company throughout the year. The Executive shall also be eligible to participate, in the Company's discretion, in any other management incentive plan to be adopted by the Board for executives of similar position, which may provide for additional payments contingent on achievement by the Company of specific rates of return on certain net assets of the Company, all on terms and conditions to be set forth in a definitive plan adopted by the Board of Directors of the Company.

(c) Benefits. The Company agrees that it will provide health and dental insurance for Executive and his wife and children. Furthermore, it is agreed that the company shall obtain a Directors and Officers Insurance Policy that will adequately cover Executive in his actions.

4. Expenses. Executive shall be entitled to be fully reimbursed for reasonable expenses incurred by him in the performance of his duties hereunder, and the Company will, from time to time, reimburse him for all such reasonable expenses upon presentation of a written itemized account thereof together with such vouchers, receipts and other evidence of such expenses as the Company may reasonably deem to be necessary. The Company will also set up a Vero Beach, Florida office for the Executive to conduct business in. Office shall be equipped accordingly.

5. Vacations. The Executive shall be entitled each year to two (2) weeks paid vacation time.

6. Termination.

(a) Definitions. For purposes of this Section, the following terms shall have the meaning ascribed thereto:

(i) "Cause" shall mean any action or inaction by Executive which in the reasonable determination of the Board of Directors constitutes (1) fraud, embezzlement, or misappropriation of funds of the Company; (2) conviction of a felony involving moral turpitude; or (3) a failure by Executive to materially perform, or a material breach of, Executive's obligations under this Agreement (other than as the result of Executive's Disability), which failure, if curable, has not been cured by Executive within 30 days after written notice from the Company to the Executive of such failure and which failure has a material adverse effect upon the Company.

(ii) "Disability" shall mean physical or mental disability, or combination thereof, which, in the good faith judgment of the Board of Directors, renders the Executive incapable of performing the Executive's duties hereunder for a cumulative period of one hundred eighty (180) days in any consecutive twelve month period.

(iii) "Good Reason" shall mean (1) any substantial reduction in the Executive's current duties and responsibilities, (2) any material breach by the Company of any of the terms of this Agreement, including, without limitation, any reduction in the Executive's compensation hereunder, or (3) any sale (whether effected by means of stock sale, asset sale, merger, joint venture or otherwise) of the Company or more than 50% thereof to any other party.

(b) Events of Termination. This Agreement shall automatically terminate upon the happening of any of the following events:

(i) Upon one (1) calendar month prior written notice of termination by the Company to the Executive;

(ii) At the end of any calendar month in which the Executive dies;

(iii) Upon written notice by the Company to the Executive or the Executive's personal representative upon the Executive's Disability;

(iv) Upon written notice given by the Executive to the Company of termination without Good Reason;

(v) Upon written notice of termination by the Company to the Executive for Cause.

(vi) Upon notice given by the Executive to the Company of termination with Good Reason.

(vii) Upon written notice of termination by the Company to the Executive without Cause.

7. Effect of Termination.

(a) In the event of any termination under paragraphs (i), (ii), (iii) or (iv) of Section 6(b), the Company shall pay to the Executive or his estate all salary, bonuses and benefits to which the Executive is entitled pro-rata through the end of the month in which such termination becomes effective (in the case of termination under paragraph (i)) or occurs (in the case of termination under paragraph (ii), (iii) or (iv)).

(b) In the event of any termination under paragraph (v) of Section 6(b), the Company shall pay to the Executive his salary pro-rata through the date of such termination and the Company shall have no further obligation to the Executive hereunder.

(c) In the event of any termination under paragraph (vi) or (vii) of Section 6(b), the Company shall continue to pay to the Executive all salary, bonuses and benefits to which the

Executive is entitled pro-rata through the period ending on the date that is two (2) calendar months following the date of termination and shall pay to the Executive on the date of termination all bonuses which have previously been earned by the Executive but not yet paid to the Executive, notwithstanding any provisions in any bonus plan to the contrary.

8. Restrictive Covenants of the Executive During the term of this Agreement and for a period of twelve (12) months from the date on which the Executive's employment with the Company terminates, the Executive covenants and agrees that he shall not do any of the following anywhere in the world:

(a) Either directly or indirectly, whether as a principal, agent, employee, consultant, stockholder, partner or in any other capacity, engage in or have a financial or any other interest in any corporation, firm, partnership, proprietorship or other business entity or enterprise which competes directly with the business of the Company as it is presently conducted or as it is conducted at the time the employment of the Executive with the Company terminates; provided, however, that nothing contained herein shall preclude the Executive from purchasing or owning less than ten percent (10%) of the stock or other securities of any company with securities traded on a nationally recognized securities exchange;

(b) induce any employee or consultant of the Company to join with him in any capacity, whether direct or indirect, in any such competing business in which he may be or become interested or employed; or

(c) solicit any customer or supplier of the Company in competition with the Company.

If any part of this Section 8 shall be determined by a court of competent jurisdiction to be unreasonable in duration, geographic area or scope, then the provisions of this Section are intended to and shall extend only for such period of time, in such area and with respect to such activities as shall be determined by such court to be reasonable and all provisions hereof shall be applied to the fullest extent permitted by law.

9. Non-Disclosure of Confidential Information.

(a) The Executive shall not during the term of this Agreement or at any time following termination of his employment hereunder intentionally or negligently disclose to any person, firm or corporation any confidential or proprietary information acquired by him during the course of his employment relating to the Company except in the course of performing his duties for the Company. Such confidential and proprietary information shall include, but shall not be limited to, proprietary technology, trade secrets, patented processes, research and development data, know-how, formulae, contractual information, pricing policies, the substance of agreements and arrangements with customers, suppliers and others, names of accounts, customer and supplier lists and any other documents embodying such confidential and proprietary information.

(b) All information and documents relating to the Company shall be the exclusive property of the Company, and the Executive shall use his best efforts to prevent any publication or disclosure of such information and documents. Upon termination of the employment of the Executive with the Company, the Executive shall not take from and will promptly return to the Company all documents, records, customer lists, computer programs, equipment designs, technical information, reports, writings and other similar documents containing confidential or proprietary information of the Company, including copies thereof, then in the Executive's possession or control.

10. Proprietary Rights. Any and all inventions, processes, procedures, systems, discoveries, designs, configurations, technology, works of authorship (including but not limited to computer programs), trade secrets and improvements (whether or not patentable and whether or not they are made, conceived or reduced to practice during working hours or using the Company's data or facilities) (collectively, the "Inventions") which the Executive makes, conceives, reduces to practice, or otherwise acquires during his employment by the Company or its affiliates (either solely or jointly with others), and which are related to the Company's present or planned business, services or products, shall be the sole property of the Company and shall at all times and for all purposes be regarded as acquired and held by the Executive in a fiduciary capacity for the sole benefit of the Company. All Inventions that consist of works of authorship capable of protection under copyright laws shall be prepared by the Executive as "works made for

hire", with the understanding that the Company shall own all of the exclusive rights to such works of authorship under the United States copyright law and all international copyright conventions and foreign laws. The Executive hereby assigns to the Company, without further compensation, all such Inventions and any and all patents, copyrights, trademarks, trade names or applications therefore, in the United States and elsewhere, relating thereto. The Executive shall promptly disclose to the Company and to no other party all such Inventions and shall assist the Company for its own benefit in obtaining and enforcing patents and copyright registrations on such Inventions in all countries. Upon request, the Executive shall execute all applications, assignments, instruments and papers and perform all acts (such as the giving of testimony in interference proceedings and infringement suits or other litigation) necessary or desired by the Company to enable the Company and its successors, assigns and nominees to secure and enjoy the full benefits and advantages of such Inventions.

11. Right to Injunction. The Company and the Executive each acknowledge that the services to be performed by the Executive hereunder are unique and that the Company required the Executive to enter into this Agreement as a condition to his employment by the Company. The Executive specifically acknowledges and agrees that the restrictions imposed by Sections 8 and 9 are reasonable as to duration, geographic area and scope and are necessary for the protection of the interests of the Company. Any breach or threatened breach of any provision of this Agreement by the Executive shall entitle the Company, in addition to any other remedies available to it at law or in equity, to bring an action in any court of competent jurisdiction to enjoin any such breach or threatened breach and to obtain an order temporarily or permanently enjoining any such breach or threatened breach.

12. Required Withholdings. All amounts due from the Company to the Executive hereunder shall be paid to the Executive net of all taxes and other amounts which the Company is required to withhold by law.

13. Assignment. With the exception to Executives stock option as explained in section 3(a), this Agreement shall not be assignable by the Executive.

14. Waiver, Amendment and Alteration. The waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any prior or subsequent breach thereof. No amendment or alteration of the terms of this Agreement shall be valid unless made in a writing signed by both parties to this Agreement specifically referring to this Agreement.

15. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to choice or conflict of law principles. The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which shall remain in full force and effect.

16. Notices. Any notices required or permitted to be given hereunder shall be sufficient if in writing, and if delivered by hand, by courier, by facsimile, or sent by certified mail, return receipt requested, prepaid, to the addresses set forth above or such other address as either party may from time to time designate in writing to the other and shall be deemed given as of the date of the delivery if delivered by hand, by facsimile or by courier or, if mailed, seven (7) days after the date of mailing.

If to the Executive:

Jack J Illare III
4880 13th Place
Vero Beach FL 32966

If to the Company:

NANO TEKNOLOGIES L.L.C.
1070 E Indiantown Rd, Suite 400
Jupiter FL 33477
Attention: _____

17. Entire Agreement and Binding Effect. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns and legal representatives.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one of such counterparts.

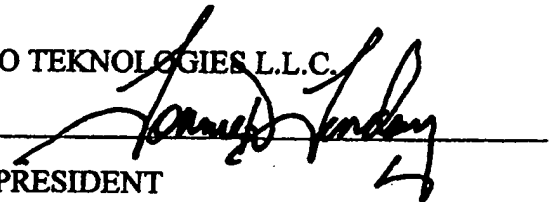
IN WITNESS WHEREOF, the parties have executed this Agreement, under seal, as of the date first written above.

Lonnie Lindsey

NANO TEKNOLOGIES L.L.C.

By: _____

Its: PRESIDENT

A handwritten signature in black ink, appearing to read "Lonnie Lindsey", is written over a horizontal line. The signature is stylized and cursive.



MINUTES OF ANNUAL MEETING OF MEMBERS

OF

NanoTeknologies LLC

The annual Meeting of Members of the above-captioned Company was held on the date and at the time and place set forth in the written Waiver of Notice signed by the Members, fixing such time and place, and prefixed to the minutes of this meeting.

There were present the following members:

Names of Members

Interest in Company

9-15-03 Jack J. Illare III
Lorrie Lindsey

Chairman + Managing Director
President + Secretary

The meeting was called to order by Jack J. Illare III
It was moved, seconded and unanimously carried that Jack J. Illare III act as
Chairman and that Lorrie Lindsey act as Secretary.

The Chairman then stated that all of the Members of the Company were represented.

The Operating Manager presented his annual report and, after discussion, the report was accepted and ordered filed with the Secretary.

The Chairman noted that it was in order to consider electing managers for the ensuing year. Upon nominations duly made and seconded, the following were unanimously elected managers of the Company, to serve for the ensuing year and until their successors are elected and qualified:

Operating Manager :

Secretary :

Treasurer :

[Signature]
[Signature]
N/A



From: Lonnie Lindsey <ltonnellindsey@msn.com> [View Contact Details](#) [Add Mobile Alert](#)

To: jack@j3partners.com

CC: ltonnellindsey@msn.com

Subject: DONE!

Date: Sun, 14 Sep 2003 20:41:49 -0700

RECEIVED

JUL 26 2007

OFFICE OF PETITIONS

Dear Jack,

I received Randy and Phil's resignations today as managing members with no terms and conditions.

Now the ball is in our court. Just let me know what you would like me to do now. We will get it done. Our patents are in order as you requested, and we will be ready to get this company moving forward as soon as they are issued. Please remember that this process takes time and I will keep you informed as to the progress of the patents as we receive word.

I am standing by.

Warm regards,

Lonnie

Compare Cable, DSL or Satellite plans: As low as \$29.95.
<https://broadband.msn.com>

From: "Lonnie Lindsey" <lonnie@lindsey@msn.com> [View Contact Details](#) [Add Mobile Alert](#)

To: jbotz34@yahoo.com, jack@j3partners.com

Subject: Nano Tek Update

Date: Sun, 23 May 2004 03:30:32 -0700

Hey Jack,

I hope this finds you well. I am just touching base with you to ask about the Nano Tek assets.

I will be going back to California in a few weeks to tidy up the items in storage there. I have a large amount of paper (files and research backgrounds) on Nano Tek. I will throw it all away unless I hear from you.

I will be in transition once again by the end of June. I assume by your silence over the past two months that you are upset with me. This is ok with me. I know you would like to get your \$1million back, and I am going to suggest to you that I move forward with the sale of NanoTek IP rights. Would you like a say about the price, or would you just trust me to get the best deal? I will continue on with getting the patents issued then marketing them as I discussed last March with you. I am trying to at least get you back your money.

Warm Regards,

Lonnie Lindsey
423-357-2376 until June 15
then email only weekly.

Stop worrying about overloading your inbox - get MSN Hotmail Extra Storage!

<http://join.msn.click-url.com/go/onm00200362ave/direct>



Law Offices of
DENNIS W. BEECH

Mailing Address:

Law Offices of Dennis W. Beech
P.O. Box 519
Murrieta, CA 92564
Telephone (951) 894-1581
Fax: (951) 894-1049

Huntington Beach (714) 378-0212
Palmdale/Lancaster (661) 273-0503
Brea/Ontario (909) 986-4624
Bakersfield (661) 821-6911
Fax (951) 894-1049

EM050562635US

June 5, 2007

Jack Illare
1401 South A1A, Suite 101
Vero Beach, FL 32963

Re: U.S. Patent Application No. 10/054,328

Dear Mr. Illare:

RECEIVED

JUL 26 2007

OFFICE OF PETITIONS

The following facts are within my personal knowledge and are provided for your information.

I was the attorney of record representing Alfred A Margaryn, the Inventor, and NANO TECHNOLOGIES, LLC., the Assignee, regarding U.S. Patent Application No. 10/054,328.

When my office received the Final Rejection concerning the subject patent application it was forwarded by letter to the Inventor on or about December 16, 2003, with a notice that a response was due by February 18, 2004.

When we did not receive instructions for how to proceed with the patent application, a second letter was forwarded on or about January 29, 2004, to both the Inventor and the Assignee represented by Mr. Lonnie Lindsey with whom I had corresponded previously and from whom I had received direction for prior patent prosecution work.

When we had not received instructions for how to proceed or payment to pay extension of time fees to respond to the Final Rejection, a reminder letter was forwarded on or about March 30, 2004, to the Inventor and known company representatives of Nano Technologies, LLC.

I was not provided instructions on the manner to proceed with the prosecution of the patent application nor were fees for payment to the U.S. Patent Office received; therefore, no further action on this application was taken.

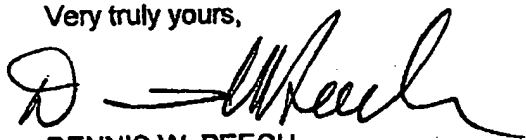
Jack Illare
June 5, 2007
Page 2

Finally a Notice of Abandonment was received from the U.S. Patent Office that was forwarded to the Inventor and Assignee at their last known addresses on or about July 8, 2004.

Recently I was informed by Mr. Jack J. Illare, III that there was no response as Mr. Lindsay had fired everyone and left the United States. According to Mr. Illare, III he was the only Board of Director remaining in the company, Nano Technologies, LLC.

It is my understanding, based on a copy of a Petition for Revival mailed April 25, 2007, by the U.S. Patent and Trademark Office that copies of the letters referenced above were provided to the U.S. Patent Office.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Dennis W. Beech", with a stylized initial "D" and a long, sweeping horizontal stroke.

DENNIS W. BEECH

DWB/ab



Law Offices of
DENNIS W. BEECH

Landmark Building - Newland Center
19900 Beach Blvd., Suite C-2
Huntington Beach, CA 92648
BUS: (714) 378-0212
FAX: (714) 378-0262

Meridian B
1007 West Avenue M-14, Sui
Palmdale, California
BUS: (805) 27
FAX: (714) 37

RESPOND TO: HUNTINGTON BEACH

December 16, 2003

Alfred Margaryan
P.O. Box 1934
Glendale, CA 91209

RE: Patent Application No. 10/054,328

Dear Mr. Margaryan:

RECEIVED

JUL 26 2007

OFFICE OF PETITIONS

We are forwarding you a copy of the Examiner's Action for your review and comment.

In the case of the last portion that rejects claims, review the examiner's reasons for rejection along with the cited patents as compared to your patent idea. Make notes of any differences and arguments you may have as to why your idea is not the same as the cited patents. Also, note any questions you may have. Remember that in the case of any new basis for rejection the Examiner's Action can be argued if you have valid unique, non-obvious features. However this is a Final Rejection and in general only changes to claims are allowed which place the application in better condition for allowance.

If it is believed that the Examiner's rejection is incorrect and can be argued in an appeal the appeal should be filed as quickly as possible in order to save as much time for the term of the patent if issued. Since there is a twenty (20) year life for a utility patent under current laws, any appeal may toll such running of time until the appeal is resolved (up to 5 years). In addition if new matter should be added, we should file a Continuation In Part (CIP) Application as soon as possible.

The examiner has made some preliminary statements concerning commonly use methods. Please review this examiner's assumption and provide comments. There are also claim rejections regarding the ranges on pages 2 through 4 that we will need to provide a response. The examiner objection to new matter on pages 2 and 3 need to also be addressed. If it is believed to be correct and we wish to keep the information in the patent application we will need to file a CIP application.

Once you have your thoughts organized, please contact our office to make an appointment to discuss this. We should try and answer as early as possible. If you do not answer by **February 18, 2004** additional fees will be required by the Patent Office. The estimated attorney fees for this Office Action are \$1,200.00 to \$1,500.00.

I have also included the Notice of the granting of the petition to make this application special.

If you have any questions do not hesitate to contact me.

Very truly yours,


DENNIS W. BEECH

DWB/ab
Enclosure



Law Offices of
DENNIS W. BEECH

Landmark Building - Newland Center
19900 Beach Blvd., Suite C-2
Huntington Beach, CA 92648
BUS: (714) 378-0212
FAX: (714) 378-0262

RESPOND TO: HUNTINGTON BEACH

Meridien Buildi
1007 West Avenue M-14, Suite C-
Palmdale, California 935
BUS: (805) 273-05
FAX: (714) 378-02

January 29, 2004

Alfred Margaryan
P.O. Box 1934
Glendale, CA 91209

Lonnie Lindsey
16027 Brookhurst Street, Ste. G
Fountain Valley, CA 92708-1551

RECEIVED

JUL 26 2007

OFFICE OF PETITIONS

RE: Patent Application No. 10/054,328

Dear Mr. Margaryan:

Enclosed is a copy of the letter forwarded to you on December 16, 2003 regarding your patent application.

If you wish to respond, but do not do so until after February 18, 2004, you must pay additional fees. If you do not respond by May 18, 2004 your application will be considered abandoned by the Patent Office.

If you have any questions do not hesitate to contact me.

Very truly yours,

DENNIS W. BEECH

DWB/ab
Enclosure



Law Offices of
DENNIS W. BEECH

Landmark Building - Newland Center
19900 Beach Blvd., Suite C-2
Huntington Beach, CA 92648
BUS: (714) 378-0212
FAX: (714) 378-0262

RESPOND TO: HUNTINGTON BEACH

Meridian Building
1007 West Avenue M-14, Suite C-10
Palmdale, California 93551
BUS: (805) 273-0502
FAX: (714) 378-0262

March 30, 2004

Alfred Margaryan
P.O. Box 1934
Glendale, CA 91209

Lonnie Lindsey
16027 Brookhurst Street, Ste. G
Fountain Valley, CA 92708-1551

RE: Patent Application No. 10/054,328

Dear Mr. Margaryan:

Enclosed is a copy of the letter forwarded to you on January 29, 2004 regarding your patent application.

If you do not respond by **May 18, 2004** your application will be considered abandoned by the Patent Office.

In order to respond after the date of abandonment, you must petition the patent office for consideration concerning the failure to respond in a timely manner. The Patent Office may or may not grant your petition depending on whether good cause for failure to respond can be shown. To file the petition additional fees must be paid.

If you have any questions do not hesitate to contact me.

Very truly yours,

DENNIS W. BEECH

DWB/ab
Enclosure

cc: Randy Lukasik
Nano Technologies, LLC
1070 E. Indian Town Road
Jupiter, FL 33477

RECEIVED

JUL 26 2007

OFFICE OF PETITIONS



Law Offices of
DENNIS W. BEECH

Landmark Building - Newland Center
19900 Beach Blvd., Suite C-2
Huntington Beach, CA 92648
Bus: (714) 378-0212
Fax: (714) 378-0262

RESPOND TO: HUNTINGTON BEACH

Palmdale/Lancaster: (661) 273-050
Temecula/Murrieta: (909) 986-462
Brea/Ontario: (909) 986-462
Bakersfield: (661) 821-691
Fax: (714) 378-0262

July 8, 2004

Alfred Margaryan
P.O. Box 1934
Glendale, CA 91209

Lonnie Lindsey
16027 Brookhurst Street, Ste. G
Fountain Valley, CA 92708-1551

RE: Patent Application No. 10/054,328


Dear Mr. Margaryan and Mr. Lindsey:

Enclosed please find a copy of the Notice of Abandonment for your patent application. The application was abandoned due to failure of response to the Office Action dated November 18, 2003. Please retain this for your files.

In order to respond after the date of abandonment, you must petition the patent office for consideration concerning the failure to respond in a timely manner. The Patent Office may or may not grant your petition depending on whether good cause for failure to respond can be shown. To file the petition additional fees must be paid.

If you have any questions do not hesitate to contact me.

Very truly yours,


DENNIS W. BEECH

DWB/ab
Enclosure

RECEIVED
JUL 26 2007
OFFICE OF PETITIONS



7-24-07

DAEIL

PTO/SB/22 (04-07)

Approved for use through 08/30/2007. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)

FY 2006

(Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)

Docket Number (Optional)

N/A

RECEIVED

JUL 26 2007

Application Number **10/054,328**

Filed **21 JAN 2007**

OFFICE OF PETITIONS

For **Fluorophosphate glass and method for making thereof**

Art Unit **Office of Petitions**

Examiner **Brian Hearn**

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

	<u>Fee</u>	<u>Small Entity Fee</u>	
<input checked="" type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$120	\$60	\$ <u>60</u>
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$450	\$225	\$ _____
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1020	\$510	\$ _____
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1590	\$795	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2160	\$1080	\$ _____

☒ Applicant claims small entity status. See 37 CFR 1.27.

☒ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number _____ I have enclosed a duplicate copy of this sheet.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the ☐ applicant/inventor.

07/25/2007 SSESHE1 00000027 10054328

01 FC:2251

60.00 DP

☐ assignee of record of the entire interest. See 37 CFR 3.71.

Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).

☒ attorney or agent of record. Registration Number 43991

☐ attorney or agent under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

23 JULY 2007

Signature

Date

PETER GANJIAN

1-818-248-1465

Typed or printed name

Telephone Number

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

First Named Inventor: Alfred A. MARGARYANArt Unit: 1755Application Number: 10/054,328Examiner: BOLDEN, ELIZABETH AFiled: 20 JAN 2002

Title:

FLUOROPHOSPHATE GLASS AND METHOD OF MAKING THEREOF**RECEIVED****OCT 27 2008**

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

OFFICE OF PETITIONS

NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee

☒ Small entity – fee \$ 270.00 (37 CFR 1.17(l)). Applicant claims small entity status.
See 37 CFR 1.27.

☐ Other than small entity – fee \$ _____ (37 CFR 1.17(l)).

2. Reply and/or fee

A The reply and/or fee to the above-noted Office action in the form of
Request for Continued Examination (identify the type of reply):

☒ has been filed previously on 6 JUN 2006

☐ is enclosed herewith.

B The issue fee of \$ _____

10/23/2008 HGBREM1 00000018 10054328

☐ has been filed previously on 02 FC:2452

270.00 OP

☐ is enclosed herewith.

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

EXHIBIT H

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

- 4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.**

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Jack J. Illare III
 Signature
 Date 10-19-2008

 Jack J. Illare III
 Typed or printed name
 Address 4880 13th Place Vero Beach FL 32966
 Address

 Registration Number, if applicable
772 538-1288
 Telephone Number

- Enclosure ☒ Fee Payment
- ☐ Reply
- ☐ Terminal Disclaimer Form
- ☒ Additional sheets containing statements establishing unavoidable delay
- ☒ Extension of time; power of attorney, statement under 37 CFR 3.73(b); 2 checks

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

22 Oct 2008
 Date

PETER GANJIAN

Peter Ganjian
 Signature


PETER GANJIAN (EXPRESS MAIL: EH 161913959 US)

 Typed or printed name of person signing certificate



**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature
Jack J. Illare III

Typed or printed name

10-19-2008

Date

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

PLEASE SEE ATTACHEMENT TITLED:

"Additional Sheets Containing Statement Establishing Unavoidable Delay Under 37 CFR 1.137(a)"

RECEIVED
OCT 27 2008
OFFICE OF PETITIONS

(Please attach additional sheets if additional space is needed.)



Application No.: 10/054,328
Express Mail: EH 161913959 US

Fluorophosphate glass and method for
making thereof

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/054,328
5 Filing Date : 20 JAN 2002
First Named Inventor : Alfred A. MARGARYAN
Petitions Examiner : Carl Friedman
10 Petition Dismissal Date : 06 JUN 2008

RECEIVED
OCT 27 2008
OFFICE OF PETITIONS

Additional Sheets Containing Statement Establishing Unavoidable Delay
15 **Under 37 CFR §1.137(a)**

Mail Stop: PETITIONS
Commissioner for Patents
P.O. Box 1450
20 Alexandria, VA 22313-1450

TO THE COMMISSIONER FOR PATENTS:

In reply to the dismissed petition dated 06 JUN 2008, the Petitioner respectfully
requests the entry and consideration of the attached documents as a collective statement
25 that the entire delay in filing the required reply from the due date for the required reply
until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(a) was unavoidable.

POWER OF ATTORNEY:

The assignee, AFO Research, Inc., has filed an appropriate Power of Attorney,
30 appointing Registered Patent Agent Peter Ganjian as attorney of record to prosecute the
patent application 10/054,328 and to transact all business in the United States Patent and
Trademark Office connected therewith. Attached, please find the executed Power of
Attorney and the Statement under 37 CFR §3.73 form the Assignee.

35 **Statement Establishing Unavoidable Delay Under 37 CFR §1.137(a):**

On June 6, 2008, in dismissing the renewed petition filed under 37 CFR §1.137(b), the Office of Petitions suggested Petitioner to consider filing a petition under 37 CFR §1.137(a). Petitioner thanks the Office for the suggestion. Accordingly, the following is a statement establishing unavoidable delay under 37 CFR §1.137(a). This statement is for an adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR §1.137(a) was unavoidable.

All previously submitted statements, attachments, exhibits, forms, and any and all documents submitted, filed, and made of record under 37 CFR §1.137(b) are expressly incorporated by reference herein, in their entirety.

The following is a listing of chronological order of events that occurred that lead to the unavoidable and, indeed, obviously unintentional abandonment of the case 10/054,328. Further followed is an explanation of some of the events that were not clearly covered in the previously submitted documents.

1. October 2, 2000 – Dr. Margaryan and Extreme Technologies (a California Entity) entered into an EMPLOYMENT AGREEMENT and concurrent EMPLOYEE INVENTION AGREEMENTS, with each agreement effective as of October 2, 2000.

The ADDENDUM to EMPLOYMENT AGREEMENT and EMPLOYEE INVENTION AGREEMENTS, which is a single sheet document was submitted to the USPTO Office of Petitions on June 6, 2006 as “Exhibit A.”

2. May 11, 2001 – Dr. Margaryan signed the ADDENDUM to EMPLOYMENT AGREEMENT and EMPLOYEE INVENTION AGREEMENTS. The first paragraph, line 2 of this document states the date, which is “11th day of May, 2001.”

The ADDENDUM to EMPLOYMENT AGREEMENT and EMPLOYEE INVENTION AGREEMENTS, which is a single sheet document was submitted to the USPTO Office of Petitions on June 6, 2006 as "Exhibit A."

- 5 3. June 1, 2001 – Mr. Jack J. Illare, III (Mr. Illare) became a passive investor, and invested the full \$1,000,000.00 of his funds into Nano Teknologies, LLC.

10 The Petitioner hereby submits, and expressly incorporates by reference, a copy of the Nano Teknologies, LLC Cash Disbursements Report (hereinafter referred to as "Cash Disbursement Report") as evidence for investment of \$1,000,000.00 deposit into Nano Teknologies, LLC by Mr. Illare. The Cash Disbursements Report has a date of January 16, 2003. It was provided to Mr. Illare on or sometimes after January 16, 2003 after numerous requests that Dr. Lindsey provide that information. As indicated on page 1 of 4, the Cash Disbursements Report clearly indicates Red Angel (Jack J. Illare) making three deposits on 21
15 Feb 2001, 29 Mar 2001, and 31 May 2001. On page 3 of 4 of the same Cash Disbursements Report, the actual deposit amounts for Member 2 (Mr. Jack Illare of Red Angel) are indicated as \$500,000.00, \$300,000.00, and \$200,000.00 for a total of \$1,000,000.00.

20 Please see the final signature page of the LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF NANO TEKNOLOGIES LLC (hereinafter referred to as "Signature Page"), associating Mr. Jack Illare's name and signature with the Red Angel Partners. The Petitioner hereby submits, and expressly
25 incorporates by reference, a copy of the Signature Page.

In addition, please see email of May 23, 2004 from Dr. Lindsey to Mr. Illare, a copy of which was submitted with the Renewed Petition under 37 CFR §1.137(b) filed on July 23, 2007, and page 12 of the Renewed Petition itself for further

discussions regarding the content of this particular email and its very important relevance to this petition.

4. June 26, 2001 – Patent application 09/892,238 was filed, and later went abandoned.
- 5
5. January 21, 2002 – Patent Application 10/054,328 was filed with the USPTO using the services of Patent Attorney, Mr. Beech. The case 10/054,328 was filed as a Continuation-In-Part of patent application 09/892,238.
- 10 6. January 24, 2002 - Dr. Lindsey contacted Mr. Illare and requested for more funds for Nano Teknologies, LLC.

Dr. Lindsey's request caused Mr. Illare to inquire about the \$1,000,000.00 invested only six or seven months prior. Mr. Illare's inquiry would eventually lead to the discovery that \$400,000.00 of the \$1,000,000.00 was missing.

15

Please see page 3, lines 34+ of the SUPPLEMENTAL STATEMENT ESTABLISHING UNINTENTIONAL DELAY, which was submitted with the original petition under 37 CFR §1.137(b) filed on 6 JUNE 2006 (hereinafter referred to as the "Supplemental Statement").

20

7. April 28, 2002 - Dr. Lindsey fired Dr. Alfred Margaryan.

Please see "Exhibit B," which was submitted to the USPTO with the Supplemental Statement on 6 June 2006. Exhibit B of the Supplemental Statement is the E-mail of 28 Apr 2002 from Dr. Lindsey to Dr. Margaryan and Mr. Ashot Margaryan, informing them that they are fired.

25

8. December 19, 2002 – USPTO mailed the first Non-Final Rejection of case 10/054,328 to Mr. Beech.

5 Mr. Beech forwarded the Non-Final Rejection of case 10/054,328 to Dr. Lindsey and Dr. Margaryan. Dr. Alfred Margaryan was fired on April 28, 2002. Dr. Margaryan never responded to any correspondence sent by Mr. Beech after this date because Dr. Margaryan was no longer an employee and was not authorized to do so. Mr. Beech was never informed of Dr. Margaryan's employment status, and therefore, unknowingly, Mr. Beech continued to forward all patent documents
10 to Dr. Margaryan's last known address in California.

9. January 16, 2003 – Dr. Lindsey generates a Cash Disbursements Report of Nano Teknologies, LLC with date 16 Jan 2003.

15 The Cash Disbursements Report clearly shows misappropriation of funds of Nano Teknologeis, LLC by Dr. Lindsey in funding of Dr. Lindsey's own personal company, Extreme Technology, Inc. using Mr. Illare's \$1,000,000.00 that was investment in Nano Teknologies, LLC. Please see all entries of the Cash Disbursements Report that are referenced as "Extreme."

20

10. February 27, 2003 – U.S. Patent Application 10/054,328 is published.

25 It should be noted that there is nothing on the publication 20030040421 that in any way could have helped Mr. Illare to know that this patent application was actually owned by Nano Teknolgoies, LLC. In fact, Dr. Margaryan executed an assignment of this case at a later date, on June 23, 2003, which assigned the case to Nano Teknologies, LLC. However, even with assignment of the case, no document was ever provided to Mr. Illare. All correspondence went to Dr. Lindsey's address in California and not to the official executive address of Nano

Teknoloies, LLC in Florida, as per the legally binding, contractual requirements of the Employment Agreement between Dr. Lindsey and Mr. Illare.

Please note that even the address of the assignee in the USPTO records is

5 **incorrect**. The USPTO records indicate the following address for Nano
Teknologies, LLC:
1070 E. **Indian Town** Road
Jupiter, Florida, 33477.

10 The name of the road is incorrect and the suite number of the company is missing
from the assignee records of the USPTO.

The **correct** company (not executive) address of Nano Teknologies, LLC is:

Nano Teknologies, LLC
15 1070 E. **Indiantown** Road
Suite 400
Jupiter, FL, 33477

20 Accordingly, not even the USPTO was supplied with correct correspondence
information for Nano Teknologies, LLC.

Please see the EMPLOYMENT AGREEMENT that was submitted with the
Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23,
2007, including the Renewed Petition itself regarding the important relevance of
25 the EMPLOYMENT AGREEMENT to this petition, including official addresses
of Nano Teknologies, LLC.

11. March 19, 2003 – Applicant (through Mr. Beech) filed a Response after Non-Final
Rejection for case 10/054,328 with the USPTO.

12. May 30, 2003 – USPTO mailed a Non-Final Rejection of case 10/054,328 to Mr. Beech.

- 5 13. June 23, 2003 - Dr. Lindsey compelled Dr. Margaryan to execute an assignment agreement of Dr. Margaryan's patent rights of the patent application 10/054,328 to Nano Teknologies, LLC.

10 Please see "Exhibit C," which was submitted to the USPTO with the Supplemental Statement on 6 June 2006. Exhibit C of the Supplemental Statement is the actual Assignment for Application for United States Patent.

15 Again, no correspondence was ever forwarded to the official executive address of Nano Teknologies, LLC in Florida to enable Mr. Illare to track the case. In fact, Mr. Illare did not know that Nano Teknogloies, LLC was now the owner of this case. Please see all assignment records for the case 10/054,328 filed with USPTO.

20 As indicated above, even the address of the assignee in the USPTO records is incorrect.

14. July 3, 2003 – USPTO recorded the assignment of patent rights for the patent application 10/054,328 to an *incorrect* address of Nano Teknologies, LLC.

25 As indicated above, even the address of the assignee in the USPTO records is incorrect.

15. July 2003 – Mr. Illare pressured Dr. Lindsey for documents related to patent application 10/054,328. This eventually lead to Mr. Illare's take-over of Nano

Teknologies, LLC. However, no documents related to the patent application 10/054,328 were ever provided to Mr. Illare.

5 Up to this proximate date of July 2003, Mr. Illare was a passive investor and Dr. Lindsey was responsible for the management of the company's day-to-day activities and the protection of company's assets, including the company intellectual property.

10 16. July 13, 2003 – Dr. Margaryan signed a petition to Make Application Special (due to Applicant age). Again, all correspondence is between Dr. Maragaryan, Dr. Lindsey, and Mr. Beech, all in California.

17. August 15, 2003 – Mr. Illare became Managing Director of Nano Teknologies, LLC.

15 Please see the EMPLOYMENT AGREEMENT that was submitted with the Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007, including the Renewed Petition itself regarding the important relevance of the EMPLOYMENT AGREEMENT to this petition.

20 With respect to Dr. Lindsey and his work, Mr. Illare considered Dr. Lindsey's day-to-day activities with respect to patent matters as a "messenger," a "go-between," or a "liaison" between the patent attorney and Mr. Illare. Dr. Lindsey was made the liaison to provide information to Mr. Illare regarding patent procedures because Dr. Lindsey was very knowledgeable about patents and patent
25 proceedings. Dr. Lindsey proved his expertise to Mr. Illare by successfully helping Nano Teknologies, LLC obtain the U.S. Patent 6,495,481, only a few months earlier in December 17, 2002. However, Mr. Illare and not Dr. Lindsey always made the final decision as to any patent matter as evident under the terms

of the EMPLOYMENT AGREEMENT, which was signed by Dr. Lindsey himself.

18. August 29, 2003 – Applicant filed a Response after Non-Final Rejection for case
5 10/054,328 with the USPTO using the services of patent attorney Mr. Beech.
19. August 29, 2003 – USPTO entered the Petition to make patent application 10/054,328
Special (expedited prosecution for the reason of Applicant's age).
- 10 20. September 14, 2003 – Under the direction of Mr. Illare, Dr. Lindsey forwards Mr.
Illare email about resignation of two employees that Mr. Illare had asked to leave
because of Mr. Illare's takeover of Nano Teknologies, LLC.

A copy of the September 14, 2003 email was submitted with the Renewed
15 Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007.
Explanations as to the relevance of this email is found in the Renewed Petition
under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007.

21. November 18, 2003 – USPTO mailed Final Rejection of case 10/054,328 to Mr.
20 Beech.
22. December 16, 2003 – Mr. Beech forwarded Final Office action to Dr. Margaryan and
Dr. Lindsey (both in California).

25 A copy of the December 16, 2003 letter from Mr. Beech was submitted with the
Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23,
2007.

It should be noted that all information were mailed to the incorrect address of Dr. Lindsey and Dr. Margaryan residences (both in California), rather than the official executive address of the company in Florida, as per the legally binding, contractual requirements of the Employment Agreement. The Employment Agreement was executed on August 15, 2003, which is two months prior to the date of the Final Office action on November 2003 and almost a year before the case went abandoned on July 2004. All correspondence for company related matter should have been directed to the official executive address of Nano Teknologies, LLC in Florida.

In addition, despite numerous requests from Mr. Illare, and the legally binding, contractual obligations of Dr. Lindsey under the Employment Agreement, Dr. Lindsey did not provide any information regarding the status of the patent application 10/054,328, the employment status of Dr. Margaryan, or Patent Attorney Mr. Beech to Mr. Illare. Further, Dr. Lindsey never informed Mr. Beech regarding the official executive address of the company in Florida nor about the employment status of Dr. Margaryan.

It should further be noted that Dr. Margaryan was fired on April 28, 2002 (more than a year prior to this correspondence from Mr. Beech) and was no longer an employee. Accordingly, Dr. Margaryan should not have received any further information about the case, and had no obligation to act in response to the information received. He did not work at Nano Teknologies, LLC.

23. January 29, 2004 – Mr. Beech forwards a reminder regarding Final Office action to Dr. Lindsey and Dr. Margaryan (both in California), but not to the official executive address of Nano Teknologies, LLC in Florida.

A copy of the January 29, 2003 letter from Mr. Beech was submitted with the Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007.

- 5 24. March 30, 2004 – Mr. Beech forwards final reminder (third) regarding the Final Office action, but not to the official executive address of Nano Teknologies, LLC in Florida.

10 A copy of the March 30, 2003 letter from Mr. Beech was submitted with the Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007.

15 Please note that unbeknownst to Mr. Beech, he forwarded a copy of this particular letter to a wrong company, wrong address, and directed it to a former employee who was fired on 14 Sep 2003 (one year ago). This former employee was not Dr. Maragaryan, but another former employee. A copy of the September 14, 2003 email was submitted with the Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007, which indicates the firing of this individual. The former employee should have never received this letter, and we do not
20 believe he did because of the incorrect company name and address to which a copy of this letter was forwarded.

25 This letter of Mr. Beech was forwarded to a wrong company with similar sounding name. The letter was forwarded to Nano **Technologies**, LLC, rather than Nano **Teknologies**, LLC.

This letter of Mr. Beech was forwarded to a wrong company address. Apparently, Mr. Beech pulled the address from the USPTO assignment records of Nano Teknologies, LLC. As stated above, that address in the USPTO assignment

records is incorrect. The letter was forwarded to the incorrect address at 1070 E. Indian Town Road, Jupiter, FL, 33477, with no suite number. As indicated above, the company (and not executive) address for Nano Teknologies, LLC is 1070 E. Indiantown Road, Suite 400, Jupiter, FL, 33477.

5 Regardless, even if the letter was mailed correctly, which was NOT, the correspondence should have been forwarded to the official executive address of Nano Teknologies, LLC, directed to Jack J. Illare, III, at 4880 13th Place, Vero Beach, FL 32966.

10 Please see the EMPLOYMENT AGREEMENT that was submitted with the Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007, including the Renewed Petition itself regarding the important relevance of the EMPLOYMENT AGREEMENT to this petition. The EMPLOYMENT
15 AGREEMENT contains all correct addresses, including the official executive address of Nano Teknologies, LLC.

As stated before, Mr. Beech used every information he had available to inform everyone regarding the status of the application 10/054,328. Regrettably, and
20 through no fault of Mr. Beech, Dr. Lindsey provided him with the wrong information, and therefore, Mr. Illare never received this letter from Mr. Beech.

25. May 18, 2004 – Application 10/054,328 is abandoned

25 26. May 23, 2004 - Dr. Lindsey forwards e-mail asking Mr. Illare to permit him to sell the company patents.

A copy of the May 23, 2004 email from Dr. Lindsey was submitted with the Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23,

2007. Explanations as to the relevance of this email is found in the Renewed
Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007.

27. June 2004 – Dr. Lindsey was in a “transition” according to email of May 23, 2004.

5 During this “transition,” Dr. Lindsey would begin to leave the country frequently
without informing others about his whereabouts.

A copy of the May 23, 2004 email from Dr. Lindsey was submitted with the
Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23,
10 2007. Explanations as to the relevance of this email is found in the Renewed
Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007.

28. July 1, 2004 – USPTO mailed the Notice of Abandonment for case 10/054,328

15 29. July 8, 2004 – Mr. Beech forwards a letter, enclosing the Notice of Abandonment to
Dr. Lindsey in California, but not to the official executive address of Nano
Teknologies, LLC in Florida.

A copy of the July 8, 2004 letter from Mr. Beech was submitted with the
20 Renewed Petition under 37 CFR 1.137(b) filed with the USPTO on July 23, 2007.

30. August 2004 - Dr. Lindsey was found in New Jersey and met with Mr. Illare and a
colleague, wherein Dr. Lindsey confessed that he spent \$400,000 of Mr. Illare's
funding of Nano Teknologies, LLC on another investment.

25

The Cash Disbursements Report of Nano Teknologies, LLC, supports this. Please
see all entries of the Cash Disbursements Report referenced as “Extreme,” which
was Dr. Lindsey's own company. Further, this clearly supports the reason why

Dr. Lindsey was always hiding corporate documents and information from Mr. Illare.

31. February 2005 –Dr. Lindsey died of a heart attack while in Philippines.

32. Late (2005) – After many months of searching for Dr. Lindsey, Mr. Illare finds out that Dr. Lindsey died in Philippines. Most of Nano Teknologies, LLC records were never provided to Mr. Illare and were lost with the disappearance, and eventually passing of Dr. Lindsey.

RESPONSE TO DISMISSAL OF THE PETITION

On page 2, paragraph 2, of the Dismissal of 6 JUNE 2008, the petition Examiner stated the Renewed Petition

“...appear to contradict the signed statement made by Illare which was included with the initial petition under 37 CFR §1.137(b) filed June 6, 2006. On page one of Illare’s SUPPLEMENTAL STATEMENT ESTABLISHING UNINTENTIONAL DELAY, Illare states ‘I was a passive investor...’ Page 2, lines 1-3 Illare states ‘Dr. Lindsey’s responsibilities included the management of the company’s day-to-day activities and the protection and maintenance of the company’s assets including company intellectual property.’”

As is clear from the above chronological time-line, there is no contradiction between Mr. Illare’s originally filed SUPPLEMENTAL STATEMENT ESTABLISHING UNINTENTIONAL DELAY (filed 6 JUN 2006) and his Renewed Petition statement (filed 23 JUL 2007). Mr. Illare was a passive investor up until August 15, 2003, which was about a year before the application was abandoned on July 1, 2004.

On page 2, paragraph 2, the petition Examiner further stated:

“Illare’s employment contract may have indicated he was responsible for patent related matters but it is clear from his statement that he was allowing Dr. Lindsey to do the actual patent related activities”

5

The Petition Examiner is partially correct. It is respectfully submitted that Mr. Illare’s Employment Agreement was not a mere formality of some vague statements between two friendly individuals just to make their business relationship look “formal.” After all, the take over of Nano Teknologies, LLC by Mr. Illare as a result of the Employment Agreement between Mr. Illare and Dr. Lindsey came about because Mr. Illare found that \$400,000.00 of his \$1,000,000.00 investment was missing. As indicated in both the Supplemental Statement filed June 6, 2006 and the Renewed Petition filed July 23, 2007, Mr. Illare took over the company (Nano Teknologies, LLC) because of lack of trust and loss of \$400,000.00 in investments. Dr. Lindsey took the \$400,000.00 to fund his company. The Cash Disbursement Report clearly shows how Dr. Lindsey misappropriated (to say the least) the Nano Teknologies, LLC funds. Most of the funding was spent on Extreme Technology, Inc., which was a company owned by Dr. Lindsey. Please see every entry in the Cash Disbursement Report with the name “Extreme.” In fact, according to the Cash Disbursement Report, the disbursements from Nano Teknologies, LLC to “Extreme” started on 30 March 2001, which is only a day after Mr. Illare (“Red Angel”) deposited \$800,000.00 of \$1,000,000.00 into Nano Teknologies, LLC.

Regardless, it is respectfully submitted that the Petitioner believes that he has very strongly proven the case with concrete evidence that Dr. Lindsey had at the very least misappropriated the Nano Teknologies, LLC funding and at the very least had an inappropriate accounting practice. These discoveries lead to mistrust between Mr. Illare and Dr. Lindsey, and the eventual takeover of the Nano Teknologies, LLC by Mr. Illare.

As stated earlier, it was the misappropriation of funds that caused Mr. Illare to takeover Nano Teknologies, LLC, including its management of patent related matters. As evidenced from this very petition and the costs involved with it, Mr. Illare was more than willing to move forward with additional funding with respect to the patent
5 application 10/054,328, but Dr. Lindsey never gave Mr. Illare any information about the case 10/054,328.

As correctly acknowledged by the Petition Examiner, the Renewed Petition did fairly well establish that Dr. Lindsey was hiding the fact that he was actually not
10 responding to any inquires from the patent attorney, Mr. Beech, and hence, the reason for the abandonment of the patent application. Mr. Illare did indeed perform all his duties as the Chairman of the Board and Managing Director of Nano Teknologies, LLC in making numerous requests from Dr. Lindsey regarding the patent application 10/054,328. However, no information was provided to Mr. Illare.

15 Mr. Illare executed his legally binding, contractual agreements as Chairman of the Board and Managing Director to fully continue with prosecuting the patent application 10/054,328 and not abandon it. Accordingly, as the Employment Agreement indicated, Mr. Illare was responsible for patent related matters, and he fully exercised those rights
20 and responsibilities. The Petitioner respectfully submitted the copy of the Employment Agreement as evidence that Mr. Illare did not permit a third party to control the prosecution of the application (at least after 15 Aug 2003, a year prior to the Abandonment of the case on July 2004), and had the full intention to continue prosecuting the above captioned case.

25 Further, Mr. Illare was under the impression that at the very least, despite any financial disputes between him and Dr. Lindsey, all patent matters (including patent application 10/054,328) were continuing to be appropriately prosecuted before the USPTO, and were not in jeopardy. There was no reason for Mr. Illare to think otherwise

because after all, Dr. Lindsey did successfully help obtain U.S. Patent 6,495,481 for Nano Teknologies, LLC. Of course, unbeknownst to Mr. Illare, by November 18, 2003, the USPTO mailed the Final Rejection of case 10/054,328 to Mr. Beech, and on December 16, 2003, Mr. Beech forwarded the Final Office action to Dr. Margaryan (fired
5 on April 2002) and Dr. Lindsey (both in California), but not to Mr. Illare at the official executive address of Nano Teknologies, LLC in Florida. All information related to this case were mailed to the incorrect address of Dr. Lindsey and Dr. Margaryan residences (in California), rather than the official executive address in Florida, as per the Employment Agreement, which was executed on August 15, 2003, two month prior to
10 the date of the final Office action of November 2003 and almost a year before the case went abandoned in July 2004.

Again, despite numerous requests from Mr. Illare, and the legally binding, contractual obligations of Dr. Lindsey under the Employment Agreement of Nano
15 Teknologies, LLC, Dr. Lindsey (in California) did not provide any information regarding the status of the patent application 10/054,328, the employment status of Dr. Margaryan, or Patent Attorney Mr. Beech to Mr. Illare (in Florida).

Mr. Illare strongly believes that Dr. Lindsey held back information on all patent
20 matters, and hid corporate documents to "buy more time," which would enable Dr. Lindsey to replace the misappropriated funds and hide all wrong doings.

A sample of a type of information provided by Dr. Lindsey with respect to all pending patent applications to Mr. Illare can be found in the email of May 23, 2004 from
25 Dr. Lindsey to Mr. Illare. This email was submitted with the Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007. Explanations as to the relevance of this email is found in the Renewed Petition under 37 CFR §1.137(b) filed with the USPTO on July 23, 2007.

As an example, the case 10/054,328 had already been Finally Rejected on November 18, 2003 (when Dr. Lindsey composed the email on May 23, 2004), and the shortened statutory period for the reply to the final Office action had already ended on February 18, 2004, with no reply or extensions of time filed. Further, Dr. Lindsey was no longer in contact with Mr. Beech, despite Mr. Beech's best efforts to contact Dr. Lindsey and continue with the prosecution of this case. As stated by Dr. Lindsey in that email on May 23, 2004 from Dr. Lindsey to Mr. Illare:

"I will continue on with getting the patents issued then marketing them as I discussed last March with you."

As is clear, Dr. Lindsey as the liaison between Mr. Illare and Mr. Beech blatantly lied. According to the correspondence from Mr. Beech at the time Dr. Lindsey composed this email, Dr. Lindsey was fully aware of the status of the patent application, but never inform Mr. Illare about it. According to the correspondences between Mr. Beech and Dr. Lindsey (previously submitted to the USPTO with the Renewed Petition on 23 JULY 2007), Dr. Lindsey was fully aware of the following documented facts from Mr. Beech, but never informed Mr. Illare (as evident from the above passage from the email):

- U.S. patent application received a final rejection on November 18, 2003.
- Statutory time limit for reply to Final rejection of November 18, 2003 ran out on February 18, 2004.
- Only a month and a half remained under 37 CFR 1.136(a) for extensions of time
- No reply was even prepared for filing
- No payment of USPTO fees were provided to Mr. Beech

All the above had already occurred and Dr. Lindsey was fully aware of all the facts of the case and never informed Mr. Illare about any of the above. Instead, Dr. Lindsey stated, "I will continue on with getting the patents issued then marketing them as

I discussed last March with you.” As was stated in the Renewed Petition filed on 23 JULY 2007, the application 10/054,328 was nowhere near issuance. However, Dr. Lindsey did the opposite, and again falsely assured Mr. Illare that he would “continue on with getting the patents issued.” In fact, without any indication of any grant of a patent
5 from the U.S. Patent Office, Dr. Lindsey now assured Mr. Illare about “marketing them as I discussed last March with you.”

Clearly, Mr. Illare was not informed and had no idea about the status of the patent application 10/054,328, despite Mr. Illare’s relentless requests about it. The only
10 information Mr. Illare had from Dr. Lindsey is that he would continue with getting the patents, which was a false assurance that the company’s IP rights were not in jeopardy.

It is clear that Dr. Lindsey abused, lied, and falsely assured the Managing Director of Nano Technologies, LLC (Mr. Illare) with respect to all patent matters, which in turn,
15 caused the unavoidable, and indeed, obviously, unintentional abandonment of the application. Accordingly, in view of Dr. Lindsey’s actions, it is respectfully submitted that the abandonment of the application should be viewed as unavoidable, and indeed, obviously, unintentional by the Applicant (Dr. Margaryan) and the then assignee (Nano Technologies, LLC) with Mr. Illare as the Chairman and Managing Director in charge of
20 all patent matters. The Petitioner respectfully requests the Petitions Office to juxtapose and carefully review the original petition filed on 06 JUNE 2006, the Renewed Petition filed on 23 JULY 2007, and the present petition with all respective attachments, which will provide a very clear picture of events that lead to the unavoidable, and indeed, unintentional abandonment of the case 10/054,328.

25 The failure of Dr. Lindsey (as the “patent liaison”) to provide information to Mr. Illare so that Mr. Illare can respond appropriately with respect to prosecuting the case is the error that caused the delay at issue. As has been reiterated numerous times in the Supplemental Statement (filed 6 June 2006), the Renewed Petition (filed 23 JULY 2007),

and herein, Mr. Illare (in Florida) requested Dr. Lindsey (in California) for information regarding all patent matters, but Dr. Lindsey never provided that information to Mr. Illare, and maintained all correspondences regarding all patent matter to and from his own personal address in California rather than the official executive address of Nano
5 Teknologies, LLC, in Florida.

Further, as dictated by the Employment Agreement, there was in place a business routine for performing functions that could reasonably be relied upon to avoid error in its performance (at least as of August 15, 2003, almost a year before the abandonment of the
10 case on July 2004). If nothing else, if at the very least the correspondences from the USPTO were forwarded to the official executive address of Nano Teknologies, LLC in Florida, then Mr. Illare would have been aware of the status of the case 10/054,328, and could have acted appropriately. However, as has been mentioned before, Dr. Lindsey (in California) never informed Mr. Beech (in California) regarding the official executive
15 address of Nano Teknologies, LLC (in Florida). Dr. Lindsey treated the Nano Teknologies, LLC patent matters the same as he treated the investments of Nano Teknologies, LLC. That is, just as Dr. Lindsey misappropriated Nano Teknologies, LLC funds for the success of his own company Extreme Technology, Inc. (as if the funds were his), Dr. Lindsey made sure that all patent matters of Nano Teknologies, LLC were
20 forwarded to him (as if they were his patents), and not to the official executive address of Nano Teknologies, LLC.

As to the experience and expertise of Dr. Lindsey with respect to patent matters, the employee (Dr. Lindsey – according to the Employment Agreement) was sufficiently
25 trained and experienced with regards to the function and routine for its performance that reliance upon such employee (as mere patent liaison) represented the exercise of due care on the part of Mr. Illare. Mr. Illare used Dr. Lindsey (as mere liaison) for Dr. Lindsey's experience in patent matters. After all, Dr. Lindsey as the patent liaison for Nano Teknologies, LLC did help to obtain the U.S. Patent 6,495,481, which was assigned to

Nano Teknologies, LLC, and now to AFO Research, Inc. Regardless of any financial mistrust between Mr. Illare and Dr. Lindsey, Mr. Illare never thought that Dr. Lindsey would also endanger the company patents. In fact, as stated above and provided in detail in the Renewed Petition filed 23 JULY 2007 with respect to Dr. Lindsey's emails, Dr.
5 Lindsey always assured Mr. Illare that all patents and pending applications were in great shape.

The Petition Examiner states on final paragraph of page 2 that:

10 "The Petitioner must explain what efforts were made to further reply to the final Office action and further why no reply was filed."

As the above time-line of events and the explanations that followed indicate, and in view of the original petition filed on 6 JUNE 2006 and the renewed petition filed on 23 JULY 2007, every effort was made by Mr. Illare to continue prosecuting the case, at least
15 as of 15 Aug 2003, which was:

- Two months before the final Office action on November 2003,
- Six months before the case went abandoned on May 2004, and
- Almost a year before the Notice of abandoned was mailed on July 2004.

20

Dr. Lindsey (in California) never provided any information regarding the case 10/054,328 to Mr. Illare (in Florida) so that Mr. Illare could take appropriate steps in relation to the prosecution of the case, including filing of a reply to the final Office action. As previously stated, Mr. Illare believes that Dr. Lindsey was hiding most
25 pertinent business matters and documents from Mr. Illare to conceal misappropriation of funds. This hiding of information by Dr. Lindsey is well established in the original Petition filed on 6 JUNE 2006, the Renewed Petition filed on 23 JULY 2007, correctly acknowledged by the Petition Examiner in the Dismissal of 06 JUNE 2008 (page 2, final sentence of paragraph 2 of the Dismissal by the Petitions Office), and in this document.

Regrettably, the situation became worse when Dr. Lindsey died on February of 2005, with most of the company information lost.

However, as to the further efforts by Mr. Illare himself to further reply to the
5 Office action, it was about September 2004 that Mr. Illare established initial contact with
Dr. Margaryan, who later introduced Mr. Illare to Attorney Dennis Beech. As was stated
in the original Petition that was submitted to the USPTO Office of Petitions on June 6,
2006, page 4, lines 23 to 34, patent attorney Beech did not provide information to Mr.
Illare during this initial set of contacts. As further stated in the original Petition on June
10 6, 2006, (page 4, lines 23 to 34) it was not until a few months prior to the filing of the
original Petition on 6 JUNE 2006 that Mr. Illare became aware that the application
10/054,328 had already been abandoned, with claim 11 of that application allowed. It
should be noted that Dr. Margaryan and Mr. Ashot Margaryan did not know Mr. Illare
before September 2004. This was their first meeting, with several others that followed
15 later. Further, Dr. Lindsey fired Dr. Margaryan and Mr. Ashot Margaryan from the
company in April 28, 2002, more than two years prior to their meeting with Mr. Illare in
September 2004. Therefore, both Dr. Margaryan and Mr. Ashot Margaryan were former
employees who did not know anything about Mr. Illare or his reasons for wanting to meet
with them. Of course, that lack of knowledge was due to Dr. Lindsey's isolation of all
20 parties involved from one another.

To continue with response regarding Mr. Illare's efforts to reply to the Office
action, it was not until late 2005, after Dr. Margaryan and Mr. Ashot Margaryan came to
know and befriend Mr. Illare that they helped Mr. Illare establish full contact with Mr.
25 Beech for information about the patent application 10/054,328. The Petitioner hereby
submits, and expressly incorporates by reference, a copy of an email from Mr. Ashot
Margaryan to Mr. Illare providing Mr. Illare with full contact information of Dennis
Beech and, in a reply to Mr. Ashot Margaryan, Mr. Illare informing Mr. Ashot

Margaryan that Dennis Beech is "sending me the folder with all patent info." The email is dated Tuesday, 20 DEC 2005.

5 However, it was not until sometimes in early 2006 that Mr. Illare actually
received all patent documents from Mr. Beech. The Petitioner hereby submits, and
expressly incorporates by reference, a copy of an email from Mr. Ashot Margaryan to
Mr. Illare reminding him to call Mr. Dennis Beech as a follow-up to remind Mr. Beech to
forward all patent documents that Mr. Beech told Mr. Illare he is "sending ... all patent
10 info." The email date is Tuesday, January 3, 2006. At the very least, it is clear from the
date of this email that until January 3, 2006, Mr. Illare still had not received any
information about the patent application 10/054,328. It was not until sometimes close to
mid-2006, that Mr. Illare received all patent documents from Mr. Beech, and immediately
thereafter, around April or May of 2006 Mr. Peter Ganjian commenced work on the
Petition to revive the case. It took Mr. Ganjian about a month or so to gather all
15 information and file the petition on 06 JUNE 2006.

The Petition Examiner further stated on page 3, lines 1-2 that:

"The record also suggests that, for whatever reason, the failure to file a
response to the outstanding Office action was intentional."

20

The Petitioner very respectfully, but strongly disagrees. It has been well
established by the original Petition on 6 JUNE 2006, the Renewed Petition 23 JULY
2007, and correctly acknowledged by the Petition Examiner on page 2, last sentence of
paragraph 2, that Dr. Lindsey hid information regarding the case 10/054,328.

25 Accordingly, the Petitioner did not know the status of the case to take appropriate actions.
If the above statement of "*failure to file a response to the outstanding Office action was
intentional*" is directed to Dr. Lindsey, the record NEVER stated the Dr. Lindsey
intentionally or unintentionally failed to file a response to outstanding Office action.
Regardless, Dr. Lindsey was an employee (as of 15 AUG 2008) that functioned as a mere

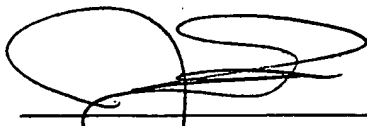
liaison for Mr. Illare, with Mr. Illare making all the decisions, and Mr. Illare always had the intention to follow through with the prosecution of the patent application 10/054,328.

Clearly, neither Mr. Illare nor Mr. Beech nor the Applicant Dr. Margaryan intended for the patent application to become abandoned and hence, the application was unintentionally abandoned through no fault of any truly responsible party.

Further, clearly, Mr. Illare did everything possible, including after he found the inappropriate conduct by Dr. Lindsey, to protect the company intellectual properties by pressuring Dr. Lindsey to provide information regarding all pending cases (if any), but nothing was provided to Mr. Illare, not even a title of a case, a case number, or anything.

The above time-line and the above-mentioned details that followed above clearly show how the delay in discovering the abandoned status of the application occurred. Of course, immediately after the discovery, the Petition to revive the patent application 10/054,328 was filed with the USPTO on 6 JUNE 2006.

Therefore, the abandonment of the case 10/054,328 was unavoidable (and indeed, obviously unintentional). The Petitioner respectfully requests the entry and consideration of all attached documents, including those expressly incorporated by reference, as a collective statement that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(a) was unavoidable, and respectfully solicits the granting of the petition pursuant to 37 C.F.R. §1.137(a).



Jack J. Illare, III

10-19-2008

Date

01/16/03

Nano Technologies LLC

Cash Disbursements Report

All Transactions

Type	Date	Num	Name	Memo
Deposit				
Deposit	02/21/2001		Red Angel	Deposit
Deposit	03/23/2001		Red Angel	Deposit
Check	03/30/2001	Wire	Extreme	
Check	03/30/2001		Fidelity F	Service Charge
Check				
Deposit	03/31/2001		Fidelity Federal	Interest
Check	04/08/2001	891	Bellsouth	
Check	04/13/2001	893	Boone, Casey, Cldin Trust Account	
Check				
Check				
Check				
Check				
Check	04/28/2001	1008	State of Delaware	File number 3277352
Deposit	04/30/2001		Fidelity Federal	Interest
Check	05/01/2001	Wire	Extreme	
Check	05/08/2001	1011	Bellsouth	
Check	05/31/2001		Fidelity Federal	Service Charge
Deposit	05/31/2001		Fidelity Federal	Interest
Check	05/31/2001	1012	Bellsouth	
Deposit	05/31/2001		Red Angel	Deposit
Check	06/02/2001	2	Extreme	
Check				
Check				
Check				
Check	06/25/2001	Wire	Extreme	
Check				
Deposit	06/30/2001		Fidelity Federal	Interest
Check	06/30/2001		Fidelity Federal	Service Charge
Check	06/30/2001	1019	Delaware Intercomp	Invoice 14767
Check				
Check	07/05/2001		Fidelity Federal	Service Charge
Check				
Check	07/10/2001	1018	Bellsouth	
Check				
Check				
Check				
Check	07/23/2001	Wire	Extreme	
Check	07/23/2001	Wire	Extreme	
Deposit	07/31/2001		Fidelity Federal	Interest
Check	07/31/2001		Fidelity Federal	Service Charge
Check				
Check	08/15/2001	1026	Premier Lab Supply	50% Deposit on Lab Equipment
Check	08/20/2001	1027	Bellsouth	
Check	08/20/2001	1028	Tax Collector, Beach County	
Check	08/20/2001	1029	Town of Juno Beach	
Deposit	08/31/2001		Fidelity Federal	Interest
Check	08/10/2001	1030	Bellsouth	
Check				

01/16/03

Nano Technologies LLC

Cash Disbursements Report

All Transactions

Type	Date	Num	Name	Memo
Bill/Pmt -Check	09/17/2001	1032	Premier Lab Supply	
Check	10/15/2001	1036	Bellsouth	
Deposit	11/09/2001		Fidelity Federal	Interest
Check	11/15/2001	1037	Bellsouth	
Check	11/15/2001	1038	Premier Lab Supply	50% Deposit on Lab Equipment
Check				
Bill/Pmt -Check	12/10/2001	atm	Extreme	
Check	12/31/2001		Fidelity Federal	Service Charge
Deposit	12/31/2001		Fidelity Federal	Interest
Check	12/31/2001	Wire	Extreme	
Check	01/29/2002	AFT	Extreme	
Check	01/29/2002	at	Extreme	
Deposit	01/31/2002		Fidelity Federal	Interest
Check	02/10/2002		Fidelity Federal	Service Charge
Check				
Check	02/13/2002	1041	Bellsouth	Final
Check				
Check				
Check	03/08/2002	AFT	Extreme	
Check				
Check	03/10/2002		Fidelity Federal	Service Charge
Check	04/08/2002	1048	Sheraton Station Square	
Check	04/10/2002		Fidelity Federal	Service Charge
Check	05/10/2002		Fidelity Federal	Service Charge
Deposit				
Check	05/24/2002	Wire	Extreme	
Check				
Deposit				
Check				
Check	08/21/2002	1049	Jack Mare	
Check	08/21/2002	1050	Delaware Intercomp	Invoice 21071
Check	09/08/2002	1051	Dennis Beech	

Total

01/16/03

Nano Teknologies LLC
Cash Disbursements Report
 All Transactions

Account	Split	Amount	Balance
Fidelity Federal			
Fidelity Federal	Member 2	500,000.00	500,200.00
Fidelity Federal	Member 2	300,000.00	800,200.00
Fidelity Federal	Experimental Glass	-57,500.00	742,700.00
Fidelity Federal	Bank Service Charges	-30.00	742,670.00
Fidelity Federal Money Market	-SPLIT-	-2,016.50	740,653.50
Fidelity Federal Money Market	Interest Income	2,714.48	743,367.98
Fidelity Federal	Telephone	-231.66	743,136.32
Fidelity Federal	Legal Fees	-500.00	742,636.32
Fidelity Federal	-SPLIT-	-821.50	741,814.82
Fidelity Federal	Guaranteed Payments to Partners	-6,000.00	735,814.82
Fidelity Federal	-SPLIT-	-695.54	735,119.28
Fidelity Federal			
Fidelity Federal	State	-100.00	734,197.78
Fidelity Federal Money Market	Interest Income	2,331.44	736,529.22
Fidelity Federal	Experimental Glass	-105,000.00	631,529.22
Fidelity Federal	Telephone	-107.47	631,421.75
Fidelity Federal	Bank Service Charges	-15.00	631,406.75
Fidelity Federal Money Market	Interest Income	2,211.51	633,618.26
Fidelity Federal	Telephone	-107.44	633,510.82
Fidelity Federal	Member 2	200,000.00	833,510.82
Fidelity Federal Money Market	Experimental Glass	-105,000.00	728,510.82
Fidelity Federal			
Fidelity Federal	Guaranteed Payments to Partners	-320.00	727,369.32
Fidelity Federal			
Fidelity Federal	Experimental Glass	-145,000.00	557,369.32
Fidelity Federal	-SPLIT-	-759.09	556,610.23
Fidelity Federal Money Market	Interest Income	1,678.02	558,288.25
Fidelity Federal	Bank Service Charges	-30.00	558,258.25
Fidelity Federal	Legal Fees	-99.00	558,159.25
Fidelity Federal			
Fidelity Federal Money Market	Bank Service Charges	-30.00	557,307.75
Fidelity Federal			
Fidelity Federal	Telephone	-107.44	557,014.06
Fidelity Federal	-SPLIT-	-471.00	556,543.06
Fidelity Federal	-SPLIT-	-508.79	556,034.27
Fidelity Federal			
Fidelity Federal	Experimental Glass	-70,000.00	452,034.27
Fidelity Federal	Experimental Glass	-50,000.00	402,034.27
Fidelity Federal Money Market	Interest Income	1,506.85	403,541.12
Fidelity Federal	Bank Service Charges	-30.00	403,511.12
Fidelity Federal			
Fidelity Federal	Furniture & equipment	-5,297.50	392,966.62
Fidelity Federal	Telephone	-105.01	392,861.61
Fidelity Federal	Local	-31.50	392,830.11
Fidelity Federal	Local	-40.95	392,789.16
Fidelity Federal Money Market	Interest Income	2,157.59	394,946.75
Fidelity Federal	Telephone	-104.76	394,841.99
Fidelity Federal			

Nano Teknologies LLC
Cash Disbursements Report
 All Transactions

Account	Split	Amount	Balance
Fidelity Federal	Accounts Payable	-5,613.05	387,123.44
Fidelity Federal	Telephone	-104.76	387,018.68
Fidelity Federal Money Market	Interest Income	1,020.94	388,039.62
Fidelity Federal	Telephone	-104.76	387,934.86
Fidelity Federal	Furniture & equipment	-5,094.35	382,840.51
Fidelity Federal			
Fidelity Federal	Accounts Payable	-125,000.00	248,032.18
Fidelity Federal	Bank Service Charges	-30.00	248,002.18
Fidelity Federal Money Market	Interest Income	773.22	248,775.40
Fidelity Federal	Experimental Glass	-110,000.00	138,775.40
Fidelity Federal	Experimental Glass	-75,000.00	63,775.40
Fidelity Federal	Experimental Glass	-35,000.00	28,775.40
Fidelity Federal Money Market	Interest Income	194.95	28,970.35
Fidelity Federal	Bank Service Charges	-60.00	28,910.35
Fidelity Federal			
Fidelity Federal	Telephone	-213.59	27,696.76
Fidelity Federal	-SPLIT-	-1,609.61	26,087.15
Fidelity Federal	Experimental Glass	-3,004.12	23,083.03
Fidelity Federal	Experimental Glass	-20,000.00	3,244.53
Fidelity Federal			
Fidelity Federal	Bank Service Charges	-15.00	2,369.15
Fidelity Federal	-SPLIT-	-430.69	1,938.46
Fidelity Federal	Bank Service Charges	-7.60	1,930.86
Fidelity Federal	Bank Service Charges	-7.40	1,923.46
Fidelity Federal	Sales	82,000.00	83,923.46
Fidelity Federal	Experimental Glass	-75,000.00	8,923.46
Fidelity Federal	Experimental Glass	-3,600.00	5,323.46
Fidelity Federal			
Fidelity Federal	Experimental Glass	-2,235.80	3,912.01
Fidelity Federal	-SPLIT-	-825.96	3,086.05
Fidelity Federal	Legal Fees	-89.00	2,987.05
Fidelity Federal	Professional Fees	-2,330.00	657.05
Total		657.05	657.05

COUNTERPART SIGNATURE PAGE

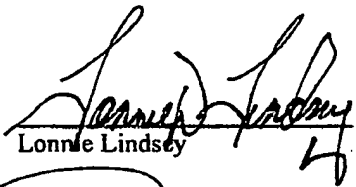
FOR

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

NANO TEKNOLOGIES LLC

IN WITNESS WHEREOF, this Agreement has been executed as of the date and year first above written.



Lonnie Lindsey



Red Angel Partners (Jack Illare)

Yahoo! My Yahoo! Mail News Music V! My Home Page Hi, Jack! Log Out Ad to Web Site Help

YAHOO! MAIL Search WEB SEARCH

Unison **351** EQUIFAX **364** Experian **382** [Click Here to See Yours!](#)

Mail Contacts Calendar Notepad What's New? Mobile Mail Options

Check Mail Compose Search Mail Search the Web

Find Christian Riggins Previous | Next | Back to Search Results Mark as Junked Print

Mail Accounts: [dennis@search.com](#) [yahoo.com](#)

Re: Dennis Beech
From: "Jack Stone" <jackstone@info-rtmch.com>
To: "yahoo! messenger" <chat@ymessenger.com>

Tuesday, October 20, 2003 2:00 PM

Dennis is sending me the folder with all patent info.

yahoo! messenger <[dennis@search.com](#)> wrote:

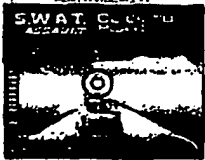
Jack,
You may find information about Dennis Beech:

Law Offices of
DENNIS W. BEECH
Landmark Building-Newland Center
18900 Beach Blvd., Suite C-2
Huntington Beach, CA 92648

PH: (714) 378-0212
Fax: (714) 378-0282

Alfred

ADULT EISENBERG

 Jack J. Hare III
President, AFD Research Inc.
1401 A1A,
Vero Beach, Florida 32963
772-338-1288 Fax 772-234-8112

Delete Reply Forward Spam Move...

Previous | Next | Back to Search Results Select Message Encoding Full Headers

Check Mail Compose Search Mail Search the Web

Copyright © 1994-2003 Yahoo! Inc. All rights reserved. Terms of Service - Copyright Policy - Guidelines
NOTICE: We collect personal information on our site.
To learn more about how we use your information, see our Privacy Policy